

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District and State Accountability System—School Performance Score (LAC 28:LXXXIII.301 and 303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC 28 Part Number LXXXIII). The changes define/ outline/clarify the following: The table in §301.L, School Performance Score Goal, was revised to reflect the use of two years of data as is defined in the text of the policy. The edits to §303.J and K, Calculating the SPS, allow School Performance Scores to be calculated very much as they have been in the past until the Graduation Index is implemented in 2007. Both revisions should allow a more efficient transition to the new system that includes *i*LEAP and a Graduation Index.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 3. School Performance Score Component

§301. School Performance Score Goal

A. - K. ...

L. 2005-2007 High School Transition

2005-2007 High School Transition			
2005			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2005	GEE(60%), Iowa (30%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2005
Baseline SPS	2004 & 2005	GEE(60%), Iowa (30%), Attendance (5%), Drop (5%)	Performance Label, SI Status, SPS AYP for 2005
Transition Baseline SPS	2004 & 2005	GEE(90%), Attendance (5%), Drop (5%)	Growth Target, Growth Goal for 2006

2006			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2006	GEE(90%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2006
Baseline SPS	2005 & 2006	2006 GEE/ <i>i</i> LEAP (90%), 2005 & 2006 Attendance (5%), 2005 & 2006 Drop (5%)	Performance Label, SI Status refer to H.3.a. above), SPS AYP for 2006; Growth Target and Goal for 2007

2007			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2007	GEE/ <i>i</i> LEAP (90%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2007
Baseline SPS	2006 & 2007	2006 & 2007 GEE/ <i>i</i> LEAP (70%), 2007 Graduation Index (30%)	Performance Label, SI Status, SPS AYP for 2007; Growth Target and Goal for 2008 (refer to I.5.a. above)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006), LR 32:2034 (November 2006).

§303. Calculating the SPS Component

A. - I. ...

J. Beginning with the 2007 baseline SPS, a combination school (a school with a grade configuration that includes a combination from both categories of schools, K-8 and 9-12,) will receive a score from a weighted average of the SPS from the K-8 grades and the SPS from the 9-12 grades.

1. The K-8 SPS will be weighted by the number of students eligible to test during the spring test administration.

2. The 9-12 SPS will be weighted by the sum of:

a. the students eligible to test during the spring test administration; and

b. the number of members of the cohort used as the denominator in the graduation index calculation.

K. For combination schools in 2006, for the baseline SPS only, the 3 accountability indicators shall be combined as follows.

1. The K-8 Assessment Index and the 9-12 Assessment Index shall be combined using a weighted average based on testing units.

2. Attendance and Dropout Indices shall be combined as defined in §511 and §513.

3. The 2007 growth SPS shall be calculated using the same procedures as the 2006 baseline SPS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2738 (December 2003), amended LR 31:763 (April 2004), LR 32:1020 (June 2006), LR 32:2034 (November 2006).

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RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—School Performance Score Goal and Disaster Considerations for the School and District Subgroup Component (LAC 28:LXXXIII.301 and 4527)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC 28, Part Number LXXXIII). The changes occur in §§301 and 4527. The purpose of these revisions is to adjust accountability policy to more effectively address conditions created by the hurricanes of 2005 and the implementation of a new testing program. The revisions made to §301 require a preliminary accountability release during 2006. As proposed, the preliminary accountability release will only include the subgroup component and only for those schools that failed the subgroup component in 2005. Implications for schools identified for school improvement are also detailed. The revision to §4527 adjusts the threshold at which schools could qualify for a waiver offered by the USDE in the wake of the hurricanes of 2005. This change is based upon feedback Louisiana Department of Education staff has received from USDE officials.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 3. School Performance Score Component

§301. School Performance Score Goal

A. - D. ...

E. Beginning in 2004, preliminary accountability results issued each summer shall include both preliminary school performance scores and subgroup component analyses for those schools on the academic watch list, or in school Improvement 2 or higher, or who have failed the subgroup component the prior year. Beginning in 2007, preliminary accountability results each summer shall include any schools determined to be entering into or remaining in School Improvement 2 or higher, exiting School Improvement 2 or higher, and who have failed the Subgroup Component the prior year. Final accountability results shall be issued during the fall semester of each year.

1. In 2006, the preliminary accountability results shall include only the subgroup component (calculated using LEAP/GEE scores only) and only for those schools that failed the subgroup component in 2005.

a. Schools identified as entering SI2 as a result of their second year of subgroup component failure must offer school choice prior to the first day of school of the 2006-07 academic year.

b. School Improvement status from the fall release of the 2005 final accountability results shall continue to apply through the first semester of academic year 2006-2007.

c. Schools identified as entering SI2 at the release of the 2006 final accountability results must offer school choice beginning in January and continuing for the remainder of the academic year.

F. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006), LR 32:2035 (November 2006).

Chapter 45. Disaster Considerations for School and District Accountability

§4527. Disaster Considerations for the School and District Subgroup Component

A. Schools and districts shall receive a one year exclusion from the subgroup component in accountability if they:

1. reside within the boundaries of parishes declared natural disaster areas by the President of the United States; and

2. were closed due to the declared disaster for 18 consecutive school days.

B. Any school or district with displaced students comprising 10 percent or more of its eligible Subgroup Component testing population on the days of testing in a given academic year, and that fails the Subgroup Component, shall receive a one year exclusion from accountability decisions (refer to §3103) based on the Subgroup Component during the academic year in which the disaster occurred.

C. Any school or district that fails the subgroup component because of the failure of any subgroup that includes displaced students shall be re-evaluated with the displaced students comprising a separate subgroup and excluded from all other subgroups.

1. If, after re-evaluation, no subgroups fail or only the displaced students subgroup fails the subgroup component, the school or district shall:

a. submit a plan for approval to the LDE addressing the needs of displaced students; and

b. implement the plan after receiving LDE approval.

2. The school or district shall not be labeled as failing subgroup AYP, nor enter or advance in school improvement.

3. Schools or districts that, at the beginning of the following academic year, enroll fewer than 50 percent of the students who comprised the displaced students subgroup may request a one year exclusion from the subgroup component.

4. The displaced students shall not be considered a separate subgroup the following academic year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1414 (August 2006), amended LR 32:2035 (November 2006).

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RULE

Board of Elementary and Secondary Education

Bulletin 123—Adult Education Content Standards (LAC 28:CXXIX.Chapters 1-11)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted *Bulletin 123—Adult Education Content Standards*. Bulletin 123 will be printed in codified format as LAC 28, Part CXXIX of the Louisiana Administrative Code. The Louisiana Adult Education Content Standards have been developed to raise accountability levels among adult education programs and ensure that similar concepts are taught at appropriate educational levels throughout the state. The intent of the content standards is to provide a resource that will ease the process of developing curriculum frameworks and planning instruction for adult educators throughout Louisiana in both Adult Basic Education (ABE) and Adult Secondary Education (ASE) class settings. The Louisiana Adult Education Content Standards were developed based upon a directive from the U.S. Department of Education, Office of Vocational and Adult Education. The standards will assist the state in complying with the requirements of the Workforce Investment Act of 1998.

Title 28

EDUCATION

Part CXXIX. Bulletin 123—Adult Education Content Standards

Chapter 1. General Provisions

§101. Introduction

A. The Workforce Investment Act of 1998, Title II, authorizes adult education in Louisiana. The Adult Education program provides instruction to adults who are 16 years of age and older, not enrolled in the K-12 system, and have less than a high school education. The purposes of adult education programs are to assist adults to:

1. become literate;
2. obtain knowledge and skills for employment and self-sufficiency;
3. obtain the educational skills necessary to become full partners in their children's educational development; or
4. complete their secondary school education.

B. The standards were designed to raise accountability levels among adult education programs and ensure that similar concepts are taught at an educational functioning level throughout the state. The intent of the content standards document is to provide a tool that will ease the processes of developing curriculum frameworks and planning instruction for adult educators throughout Louisiana.

C. The Louisiana Adult Education Content Standards may be used by programs in providing Adult Basic Education (ABE) and Adult Secondary Education (ASE) instruction to adults. These educational functioning levels (EFLs) of adults were considered in developing the standards. The current educational functioning levels, as approved by the National Reporting System for Adult Education, include:

1. Adult Basic Education

Educational Functioning Level	Grade Level Equivalent
Beginning ABE Literacy	0 to 1.9
Beginning Basic Education	2 to 3.9
Low-Intermediate Basic Education	4 to 5.9
High-Intermediate Basic Education	6 to 8.9

2. Adult Secondary Education

Educational Functioning Level	Grade Level Equivalent
Low Adult Secondary Education	9 to 10.9
High Adult Secondary Education	11 to 12.9

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2036 (November 2006).

§103. Content Standards Foundation Skills*

A. The following foundation skills have been identified as essential competencies needed to meet the demands of the classroom and the world beyond. These skills apply to all students in all disciplines. These foundation skills were used throughout the development of the Louisiana Adult Education Content Standards and are embedded throughout the standards.

1. Communication. Communication is a process by which information is exchanged and a concept of "meaning" is being created and shared between individuals through a common system of symbols, signs, or behavior. Students should be able to communicate clearly, fluently, strategically, technologically, critically, and creatively in society and in a variety of workplaces. This process can best be accomplished through use of the following skills:

- a. reading;
- b. writing;
- c. speaking;
- d. listening;
- e. viewing; and
- f. visually representing.

2. Problem Solving. Problem solving is the identifying of an obstacle or challenge and the application of knowledge and thinking processes which include reasoning, decision making, and inquiry in order to reach a solution using multiple pathways, even when no routine path is apparent.

3. Resource Access and Utilization. Resource access and utilization is the process of identifying, locating, selecting, and using resource tools to help in analyzing, synthesizing, and communicating information. The identification and employment of appropriate tools, techniques, and technologies are essential to all learning processes. These resource tools include:

- a. pen;
- b. pencil;
- c. paper;
- d. audio/video material;
- e. word processors;

- f. computers;
- g. interactive devices;
- h. telecommunication; and
- i. other emerging technologies.

4. **Linking and Generating Knowledge.** This is the effective use of cognitive processes to generate and link knowledge across the disciplines and in a variety of contexts. In order to engage in the principles of continual improvement, students must be able to transfer and elaborate on these processes. *Transfer* refers to the ability to apply a strategy or content knowledge effectively in a setting or context other than that in which it was originally learned. *Elaboration* refers to monitoring, adjusting, and expanding strategies into other contexts.

5. **Citizenship.** Citizenship involves the application of the understanding of the ideals, rights, and responsibilities of active participation in a democratic republic that includes:

- a. working respectfully and productively together for the benefit of the individual and the community;
- b. being accountable for one's choices and actions and understanding their impact on oneself and others;
- c. knowing one's civil, constitutional, and statutory rights; and
- d. mentoring others to be productive citizens and lifelong learners.

*Developed by the Louisiana Department of Education, Louisiana Content Standards and Assessment Development Project, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2036 (November 2006).

§105. Interpreting and Using the Adult Education Content Standards

A. This §105 provides definitions for standards-related terms used throughout this Part CXXIX. Following is a hierarchy of the standards-related terms used in this Part.

1. *Strand*—the subject area that is to be taught. There are five strands incorporated in the Louisiana Adult Education Content Standards. The strands include:

- a. language arts—reading;
- b. language arts—writing;
- c. mathematics;
- d. science; and
- e. social studies.

Strand Example: *Social Studies*

2. *Standard*—the overall goal, end result of a learning experience.

a. A *standard* determines the purpose, aim and rationale of class instruction.

b. A *standard* is often not immediately measurable; rather, it sets the framework by preparing students for future activities and further knowledge acquisition.

c. A *standard* expresses a purpose for instruction but does not designate the specific abilities that the learner must possess.

Standard Example: Adult learners use and apply social studies concepts in a variety of situations.

3. *Benchmark*—supports the standard. It defines what a learner must know and be able to do in the lesson. A *benchmark* is brief and written to the point so that it is easy to understand and may be achieved over a well defined time period.

Benchmark Example: Adult learners apply the behavioral science concepts of psychology, sociology and anthropology to personal and community situations.

Describe different family structures and role of moods, emotions, and relationships in a family.

Define bias, prejudice and personal values, and give examples of each.

Explain and give examples of social stratification, race, ethnicity and gender and their effect on individual beliefs, attitudes, and behavior.

Describe the impact of values, and beliefs on specific group behaviors.

Describe selected group values and beliefs and how they influence society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2037 (November 2006).

Chapter 3. English Language Arts—Reading

§301. Standard

A. Adult learners develop and apply reading strategies for the understanding of written material for different purposes.

B. The four components of teaching reading to adult learners include alphabetics (phonemic awareness and word analysis), fluency, vocabulary, and comprehension. The range for introducing, instructing, reinforcing, and mastering each of the four components is:

1. Alphabetics—Beginning Literacy to Beginning Basic (0 to 3.9);

2. Fluency—Beginning Basic to High Intermediate (2.0 to 8.9);

3. Vocabulary—Beginning Basic to High Adult Secondary (2.0 to 12.9);

4. Comprehension—Beginning Basic to High Adult Secondary (2.0 to 12.9).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2037 (November 2006).

§303. Benchmark 1—Phonemic Awareness and Word Analysis

A. Adult learners apply phonemic awareness and word analysis skills to make connections between written letters and sounds.

1. Mastery should be evidenced upon completion of the Beginning Basic (2.0-3.9).

B. Phonemic Awareness

1. Apply phonemic awareness skills:

- a. isolation;
- b. identity (written and oral letter recognition);
- c. categorization;
- d. blending;
- e. segmentation;
- f. deletion;
- g. addition;
- h. substitution;
- i. syllabication.

C. Word Analysis

1. Apply word analysis (phonetic awareness) skills:

- a. context clues (i.e., picture clues and sentence clues);
- b. basic sight words;

- c. spelling patterns and rules;
- d. meaning of root words, suffixes and prefixes;
- e. decoding of unfamiliar or new words.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2037 (November 2006).

§305. Benchmark 2—Fluency

A. Adult learners apply fast and accurate decoding skills to read with the proper rhythm, intonation, and expression in order to increase comprehension.

1. Mastery should be evidenced by completion of High Intermediate (6.0-8.9).

a. Group words appropriately into meaningful grammatical units for interpretation.

b. Use punctuation to determine where to place emphasis or pause in order to make sense from written print and non-print text during oral reading.

c. Apply context clues to interpret written print and non-print text.

d. Read at an appropriate pace based upon the level of materials and the purpose for reading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2038 (November 2006).

§307. Benchmark 3—Vocabulary

A. Adult learners apply spoken, oral and written vocabulary skills in order to comprehend and communicate in a variety of contexts.

1. Vocabulary is a skill that is developed through a continuous process at all educational functioning levels.

a. Use context clues to derive meanings of words from spoken, oral, written print and non-print text.

b. Apply the meaning of root words, suffixes and prefixes to derive meaning from new and unfamiliar vocabulary words from a variety of print and non-print texts.

c. Recognize the meaning of word origins (i.e., Greek, Anglo-Saxon, Latin) to understand content area vocabulary words.

d. Recognize basic word patterns, antonyms, and synonyms.

e. Identify and use idioms and the literal and figurative meanings of words in spoken, oral and written language.

f. Identify multiple meanings of words, denotative and connotative meanings of words, and multiple meanings of related words.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2038 (November 2006).

§309. Benchmark 4—Comprehension

A. Adult learners apply reading skills (Alphabetics, Fluency, Vocabulary) and strategies to interpret meaning from spoken, oral and written language in a variety of contexts.

1. Comprehension is a skill that is improved through a continuous process at all educational functioning levels.

a. Construct meaning from spoken, oral and written communication:

i. use the conventions of print (read from left to right directionality, from top to bottom, one-to-one matching, sentence framing);

ii. recognize the general structure of sentences and paragraphs;

iii. identify error detection while reading;

iv. locate information from print and non-print text, recalling information, and using information effectively;

v. listening comprehension;

vi. use skimming and scanning strategies.

b. Apply information and ideas from a passage:

i. organize thoughts and ideas according to order and sequence;

ii. summarize;

iii. retell;

iv. generate questions about print and non-print text;

v. state the main idea and supporting details;

vi. read and interpret charts and graphs.

c. Analyze content, style, and structure:

i. make inferences from print and non-print text;

ii. state points of view;

iii. state the author's purpose of print and non-print text;

iv. recognize the literary structure (i.e., cause and effect, compare and contrast, fact and opinion);

v. recognize and describe story elements (i.e., setting, plot, character, theme, point of view, beginnings, middles, endings);

vi. interpret figurative language;

vii. make predictions from print and non-print text.

d. Develop connections between separate sources of information:

i. write about print and non-print text;

ii. integrate information from long print and non-print text;

iii. make predictions from print and non-print text;

iv. describe multiple inferences from an entire passage;

v. integrate information from outside the passage (i.e., life experiences) to reach a new understanding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2038 (November 2006).

Chapter 5. English Language Arts—Writing

§501. Standard

A. Adult learners write competently using Standard American English for a variety of purposes and audiences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2038 (November 2006).

§503. Benchmark 1—Spelling, Punctuation, and Capitalization

A. Adult learners apply correct spelling, punctuation, and capitalization rules to complete a variety of writing tasks in accordance with the learner's identified educational functional level.

1. Write (print and cursive) upper and lower-case letters of the alphabet.
2. Write and spell words correctly.
3. Apply capitalization rules.
4. Apply punctuation rules to all written text:
 - a. terminal punctuation;
 - b. commas;
 - c. colons and semi-colons;
 - d. apostrophes;
 - e. quotation marks.
5. Use a variety of resources to spell unfamiliar words.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2038 (November 2006).

§505. Benchmark 2—Grammar, Usage and Conventions of Sentence Structure

A. Adult learners identify and apply correct grammar and usage rules and the conventions of sentence structure to complete a variety of writing tasks in accordance with their identified educational functional level.

1. Identify and use basic parts of speech:
 - a. verbs;
 - b. nouns;
 - c. pronouns;
 - d. adjectives;
 - e. adverbs;
 - f. conjunctions;
 - g. prepositions; and
 - h. interjections.
2. Identify subject and predicate in sentences.
3. Apply standard grammar and usage to subject and verb agreement, simple past, present, and future continuous verb tense.
4. Identify and correct sentence fragments and run-on sentences.
5. Recognize the standard use of homonyms, homophones, and homographs.
6. Use a thesaurus.
7. Apply standard grammar and usage.
 - a. Combine simple sentences into compound and complex sentences.
 - b. Construct conditional clauses.
 - c. Develop parallel structures.
 - d. Use modifiers appropriately.
 - e. Use compound verbs appropriately.
 - f. Create possessive forms of nouns or pronouns with gerunds.
 - g. Use conjunctive adverbs appropriately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2039 (November 2006).

§507. Benchmark 3—Writing Process

A. Adult learners apply writing skills to complete a variety of practical writing tasks in accordance with their identified educational functional level.

1. Apply pre-writing tools to generate topics and/or plan writing tasks (e.g., brainstorming, clustering, outlining, listing, webbing).

2. Write a dialogue of sentences that uses descriptive words and phrases to develop ideas and advance characters.

3. Develop a paragraph on a topic of the learner's own choosing that includes a topic sentence followed by supporting details.

4. Write an essay/composition (i.e., expository, descriptive, persuasive, narrative, comparative) on a given topic that includes a well-developed thesis.

5. Write a letter for a variety of purposes that includes a heading, salutation, and closing.

6. Revise written work by identifying and correcting:

- a. spelling;
- b. punctuation;
- c. capitalization;
- d. sentence fragments;
- e. run-on sentences; and
- f. grammar and usage errors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2039 (November 2006).

Chapter 7. Mathematics

§701. Standard

A. Adult learners apply reasoning and problem-solving techniques, use numerical intuition to verify solutions, and make connections with life situations for communication of math ideas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2039 (November 2006).

§703. Benchmark 1—Number Sense

A. Adult learners develop and apply number sense to solve a variety of real-life problems and to determine if the results are reasonable.

1. Read, write, and orally express whole numbers as numerals and number words between 0 and 1,000,000.

2. Read, write, and locate whole numbers and fractions on a number line between 0 and 1,000.

3. Round whole numbers to a given place.

4. Round decimals to tenths, hundredths, and thousandths place.

5. Read, write, and orally express a decimal as a part of a whole, expressed in tenths, hundredths, thousandths, etc.

6. Read, write and express a fraction as the relationship between the part (numerator) and the whole (denominator).

7. Read, write and express numbers in their equivalent fractional, decimal, and percent form (e.g., $1/2 = 3/6 = 2/4$, and $0.5 = 50$ percent).

8. Read, write, and order integers.

9. Match whole numbers and fractions (e.g., $1/2$, $1/3$, $1/4$) to pictorial representations and identify these as commonly used fractions.

10. Identify coins and currency and recognize money (e.g., \$ and ¢) symbols.

11. Identify and construct equal relationships of coins and currency (e.g., a quarter equals 2 dimes and 1 nickel).

12. Make change using pennies, nickels, dimes, quarters, half-dollars, and bills up to \$100.

13. Add, subtract, multiply and divide by one, two, three, and four digit numbers.

14. Add, subtract, multiply and divide fractions, decimals, and percents.

15. Use computation and estimation to solve problems involving integers, exponents, and square roots.

16. Use estimation to check the reasonableness of results in word problems with calculator situation.

17. Solve multi-step word problems using whole numbers.

18. Solve word problems involving whole numbers, fractions, decimals, and percents.

19. Represent numbers in various ways:

- a. prime factors;
- b. square roots;
- c. exponents;
- d. absolute value; and
- e. scientific notation.

20. Use estimation to check the reasonableness of results using whole numbers, fractions, decimals, and percents in solving problems.

21. Solve and simplify expressions using order of operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2039 (November 2006).

§705. Benchmark 2—Data Analysis

A. Adult learners apply data collection, data analysis, and probability to interpret, predict, and/or solve real-life problems.

1. Gather data familiar to themselves and their surroundings.

2. Sort, classify, and organize data about objects.

3. Represent data using concrete objects.

4. Represent data using tables and graphs such as:

- a. line graphs;
- b. bar graphs;
- c. circle graphs; or
- d. pictorial graphs and maps.

5. Analyze tables, charts, graphs, diagrams, and maps.

6. Apply basic concepts of probability.

7. Create tables, charts, and diagrams using spreadsheets or other technology.

8. Calculate and interpret the mean, median, mode, and range of a data set.

9. Use data collection, data analysis, and probability to solve word problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2040 (November 2006).

§707. Benchmark 3—Algebra

A. Adult learners apply algebraic concepts and methods to explore, analyze or solve real-life problems.

1. Describe and extend a variety of patterns using manipulative or objects.

2. Describe and extend numerical patterns (e.g., 2, 4, 6, 8).

3. Identify the missing element in a number sentence involving:

a. addition;

b. subtraction;

c. multiplication; and/or

d. division with whole numbers.

4. Identify algebraic concepts such as:

a. variable;

b. constant;

c. term;

d. expression;

e. equation; and

f. inequality.

5. Solve one variable linear equation or inequality with one operation. Use substitution to check the answer.

6. Solve one variable linear equation with two or more operations. Use substitution to check the answer.

7. Solve word problems using one and two-step linear equations.

8. Solve proportion problems using algebraic methods.

9. Determine slope and intercept of a linear equation.

10. Create a table of values that satisfy a linear equation.

11. Create a graph using a table of values from a solved equation.

12. Use formulas to solve problems.

13. Write and solve equivalent forms of equations, inequalities, and systems of equations using:

a. mental math;

b. paper and pencil; or

c. technology (e.g., calculator or computer).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2040 (November 2006).

§709. Benchmark 4—Geometry

A. Adult learners use geometric properties, relationships, and methods to identify, analyze and solve real-life problems.

1. Identify basic geometric shapes.

2. Describe basic geometric shapes by naming, building, drawing, comparing, and sorting two and three-dimensional shapes, i.e.,:

a. cube;

b. cylinder;

c. prism;

d. square;

e. rhombus;

f. hexagon;

g. sphere.

3. Graph ordered pairs on rectangular coordinate plane.

4. Classify angles as right, acute, obtuse, straight, or reflex.

5. Describe geometric figures, e.g.,:

a. symmetric;

b. perpendicular;

c. parallel.

6. Compare geometric figures using similarity or congruency.

7. Solve problems involving alternate interior, corresponding, complementary, or supplementary angles.

8. Classify triangles by their angles and sides as:
 - a. equilateral;
 - b. isosceles;
 - c. scalene;
 - d. acute;
 - e. obtuse; and
 - f. right.
9. Label and identify the characteristics, (i.e., radius, diameter, base, height) of a:
 - a. circle;
 - b. cylinder;
 - c. parallelogram;
 - d. pentagon;
 - e. hexagon;
 - f. octagon;
 - g. decagon;
 - h. rhombus;
 - i. trapezoid;
 - j. cube;
 - k. sphere; or
 - l. prism.

10. Use the appropriate geometric formula (i.e., area, perimeter, volume, Pythagorean relationship, distance between two points in a plane) to solve problems.

11. Solve problems using similarity and proportion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2040 (November 2006).

§711. Benchmark 5—Measurement

A. Adult learners apply knowledge of standard measurements to real-life situations.

1. Recognize the attributes of length, volume, weight, area, and time.

2. Measure using non-standard (e.g., string, paper clip, toothpicks) and standard (i.e., U.S. Customary and metric system) units.

3. Use common references (e.g., pitcher, paper clip, string) for measurements to make comparisons and estimates.

4. Recognize that units of measurements or approximations can affect differences in precision.

5. Select an appropriate unit and tool to measure an object or event, i.e.,:

- a. ruler;
- b. thermometer;
- c. measuring cup;
- d. scale; and
- e. stop watch.

6. Identify the appropriate U.S. customary units of measurement for an object or event, i.e.,:

- a. length;
- b. capacity;
- c. weight;
- d. area;
- e. volume;
- f. time; and
- g. temperature.

7. Solve real-life problems involving measurement using U.S. customary units.

8. Identify the appropriate metric units of measurement for an object or event, i.e.,:

- a. length;
- b. capacity;
- c. weight;
- d. area;
- e. volume;
- f. time; and
- g. temperature.

9. Solve real-life problems involving measurement using metric units.

10. Apply the appropriate tools and standard units to measure an object or event, i.e.,:

- a. length;
- b. capacity;
- c. weight;
- d. area;
- e. volume;
- f. time; and
- g. temperature.

11. Use appropriate tools and standard units to measure geometric figures, i.e.,:

- a. angles;
- b. circles;
- c. triangles;
- d. squares.

12. Convert measurements to equivalent units within a given system (i.e., U.S. customary or metric system).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2041 (November 2006).

Chapter 9. Science

§901. Standard

A. Adult learners understand the key concepts and principles of science and use this scientific knowledge and scientific ways of thinking for individual and social purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2041 (November 2006).

§903. Benchmark 1—History and Nature of Science

A. Adult learners understand the history and nature of science and illustrate different aspects of scientific inquiry and the human aspects of science.

1. Develop the ability to engage in scientific inquiry.
2. Develop an understanding of the nature of scientific knowledge.
3. Develop an understanding of the history of science.
4. Recognize the relationship between science and technology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2041 (November 2006).

§905. Benchmark 2—Physical Science

A. Adult learners recognize the characteristics and interrelationships of matter and energy in the physical world.

1. Identify the different states of matter, recognizes that matter can be made of one or more materials, and that it can change and exist in one or more states.

2. Identify and describe physical properties of objects.
3. Identify and describe structure of atoms.
4. Identify and describe chemical reactions.
5. Identify and describe conservation of energy and matter.
6. Recognize the characteristics of forces and motion and evaluate their interaction.
7. Identify how energy is a property of many substances, occurs in many forms (e.g., heat, light, and electricity), and can be transferred in many ways.
8. Identify and describe interactions of energy and matter.
9. Interpret visual representations in science (e.g., diagrams, formulas).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2041 (November 2006).

§907. Benchmark 3—Life Science

A. Adult learners recognize the characteristics of living organisms, understand their relationship to each other and to their environment, and interpret related scientific data.

1. Recognize the characteristics and basic needs of living things.
2. Recognize and describe the differences between living and non-living things.
3. Describe life cycles.
4. Identify the various systems and functions of the human body.
5. Compare organisms to their environment, e.g.,:
 - a. predator/prey;
 - b. parasite/host;
 - c. food chains; and
 - d. webs.
6. Identify the basic characteristics of the cell.
7. Identify factors affecting heredity.
8. Recognize behavior of organisms.
9. Explore experimental evidence that supports the theory of the origin of life.
10. Interpret visual representations in science (e.g., diagrams, formulas).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2042 (November 2006).

§909. Benchmark 4—Earth and Space Science

A. Adult learners develop an understanding of the composition, processes, and interrelationships of Earth, the solar system, and the universe.

1. Identify the structure and composition of the Earth system.
2. Explain the Earth's relationship to other bodies in the solar system.
3. Recognize evidence for evolution.
4. Describe the energy in the Earth's system.
5. Describe geochemical cycles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2042 (November 2006).

§911. Benchmark 5—Science and Society

A. Adult learners develop an understanding of the importance of environmental quality in the world.

1. Identify ecological systems and their interactions (e.g., air, water, plants).
2. Describe how resources and resource management affect the environment.
3. Recognize the relationships between environmental protection and maintaining quality of life.
4. Recognize how personal choices and responsible actions impact the environment, e.g.,:
 - a. litter;
 - b. irrigation;
 - c. levees; and
 - d. offshore drilling.
5. Recognize personal and community health.
6. Recognize population growth.
7. Recognize risk and benefits.
8. Interpret visual representations of scientific data (i.e., diagrams, charts, and tables).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2042 (November 2006).

Chapter 11. Social Studies

§1101. Standard

A. Adult learners use and apply social studies concepts in a variety of situations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2042 (November 2006).

§1103. Benchmark 1—Behavioral Sciences

A. Adult learners apply the behavioral science concepts of psychology, sociology and anthropology to personal and community situations.

1. Describe different family structures and role of moods, emotions, and relationships in a family.
2. Define *bias*, *prejudice* and *personal values*, and give examples of each.
3. Explain and give examples of social stratification, race, ethnicity and gender and their affect on individual beliefs, attitudes, and behavior.
4. Describe the impact of values, and beliefs on specific group behaviors.
5. Describe selected group values and beliefs and how they influence society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2042 (November 2006).

§1105. Benchmark 2—Economics

A. Adult learners employ basic economic concepts, evaluate problems, and make rational choices as a consumer, worker, and citizen.

1. Recognize that individuals and families with limited resources make economic choices.
2. Define and apply the concept of choice by balancing cost with benefits.

3. Recognize and explain the relationship between producers and consumers (supply and demand).
4. Understand that prices in a market economy are determined by the interaction of supply and demand.
5. Use concepts of money management, e.g., :
 - a. interest;
 - b. credit;
 - c. savings;
 - d. investment;
 - e. budget; and
 - f. debt.
6. Recognize and explain the role of banks and other financial institutions in the economy.
7. Recognize that consumers and producers make economic choices based on supply, demand, access to markets and actions of government.
8. Recognize how international trade links countries around the world.
9. Recognize how nations specialize and become interdependent through trade.
10. Recognize and describe how government policies create free or restricted trade.
11. Use tables, graphs, diagrams, and charts of economic information to explain economic trends and patterns at the local level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2042 (November 2006).

§1107. Benchmark 3—Geography

A. Adult learners demonstrate the use of geographic tools to locate and analyze information about people, places and environments.

1. Define and demonstrate knowledge of directions in their local community and state, as well as, on a world map and globe.
2. Draw simple maps to give directions.
3. Recite address including:
 - a. city;
 - b. state;
 - c. zip code;
 - d. parish; and
 - e. country.
4. Recognize that maps and globes represent different views of the world.
5. Describe and define natural features such as:
 - a. landforms;
 - b. bodies of water;
 - c. mountains;
 - d. deserts; and
 - e. natural resources.
6. Locate positions on a map or globe.
7. Interpret and use a map key.
8. Describe the characteristics of maps.
9. Interpret maps, charts, graphs and other geographic information.
10. Define and use longitude and latitude to locate positions on a map or globe.
11. Recognize and locate specific land masses and bodies of water.
12. Describe how people depend on the physical environment and its natural resources to satisfy basic needs.

13. Describe how people can conserve their natural and man-made resources.

14. Describe the purposes of, and differences among, maps, and how maps are both similar to and different from globes and aerial photographs.

15. Describe the cause and effect of selected migrations and world history, as well as, their family's migration history.

16. Describe how people have depended on the physical environment and its natural resources to satisfy their needs and how these needs have an impact on the natural environment.

17. Explain and interpret basic geo-political, population and cultural geography maps, charts, graphs and tables.

18. Describe natural and demographic characteristics of places and use this knowledge to define how regions relate to one another and undergo change.

19. Explain how geographic factors affect human activities.

20. Interpret thematic maps that depict various aspects of the United States and its world trade products, trade routes, and cross-cultural interactions.

21. Identify economic, political, and social patterns that have emerged over the last 50 years.

22. Use geographic knowledge to explain the past, interpret the present, and to anticipate future issues.

23. Explain policies and programs for resource management, including the relationship between environmental quality and economic growth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2043 (November 2006).

§1109. Benchmark 4—History

A. Adult learners develop a historical time and perspective as they study the history of their community, state, nation, and world.

1. Sequence days, months, holidays and personal life events in chronological order.
2. Trace the history of a family (i.e., important events, documents, customs) using primary source materials, i.e.,:
 - a. photographs;
 - b. artifacts; and
 - c. interviews.
3. Describe personal family events from the past your family experienced. Consider cultural changes as well as core values and beliefs.
4. Describe how people lived in earlier centuries then explain how their lives would be different today.
5. Describe examples of honesty, courage, determination, and individual responsibility in United States and world history.
6. Sequence key eras in world history, United States history, and Louisiana history over the last millennium.
7. Describe the positive contributions of selected individuals from world history, United States history and Louisiana history.
8. Describe historical examples of architecture, music, art, religion and sports and how they are viewed in the present.
9. Describe the distinctive economy, symbols, customs and oral traditions of Louisiana.

10. Interpret historical data from graphs, tables, pictures, maps and political cartoons.

11. Recognize and understand the impact of key historical places, events, ideas, decisions, and cultures in United States and world history by describing selected cultures of the ancient and medieval world and identify their contributions to world history.

12. Recognize and understand the impact of historical events, ideas, decisions, and cultures in United States and world history by describing selected events from the fifteenth to the twenty-first century and their impact on world history.

13. Use key documents of United States history to analyze past and present issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2043 (November 2006).

§1111. Benchmark 5—Civics

A. Adult learners demonstrate knowledge of the structures, functions and symbols of government and apply these to citizenship.

1. Identify the rights and responsibilities of citizens and gives examples of how citizens use their rights and carry out their responsibilities.

2. Recognize that in order to select effective leaders, citizens have to become informed about candidates' qualifications and the issues they support.

3. Demonstrate how to follow the actions of elected officials and how to communicate with them while in office.

4. Identify the fundamental rights guaranteed in the Bill of Rights and can apply these protections to everyday life.

5. Explain that the United States government is divided into executive, legislative, and judicial branches with specific responsibilities and powers.

6. Demonstrate knowledge of federal, state, and local systems of government by explaining how each system affects their lives.

7. Identify and explain the impact of American democratic idea and actions in selected world events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:2044 (November 2006).

Weegie Peabody
Executive Director

0611#002

RULE

Board of Elementary and Secondary Education

Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation—Foodservice Management Company Contracts (LAC 28:XLIX.111)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation* (LAC 28:XLIX).

Bulletin 1196 is the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Child Nutrition Programs in Louisiana. This bulletin was developed as a result of the necessity to incorporate all federal and state policy changes which have already been implemented by the sponsors. This revision is an update of state policies.

Title 28

EDUCATION

Part XLIX. Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation

Chapter 1. Administration

§111. Permanent Agreement between Sponsor and Louisiana State Department of Education

A. - C.26.a. ...

27. Foodservice Management Company Contracts

a. School food authorities eligible to contract with a for profit entity must use the state approved prototype Food Service Management Company (FSMC) contract if Child Nutrition Program funds are to be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2102 (December 2001), amended LR 29:2022 (October 2003), LR 32:1418 (August 2006), LR 32:2044 (November 2006).

Weegie Peabody
Executive Director

0611#001

RULE

Office of the Governor

Commission on Law Enforcement and Administration of Criminal Justice

General Subgrant Guidelines
(LAC 22:III.Chapter 63)

In accordance with the provision of R.S. 15:1204, R.S. 14:1207, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice hereby adopts rules and regulations relative to subgrants.

Title 22

CORRECTIONS, CRIMINAL JUSTICE, and LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 6. Program Operational Policies

Chapter 63. POST Equipment and Training Grants §6301. Adoption

A. The following operational policies are hereby adopted by the Peace Officer Standards and Training Council pursuant to LAC 22 Part III Subpart 3 Chapter 45, §4511 and shall be effective upon approval of the Louisiana Commission on Law Enforcement as provided therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2044 (November 2006).

§6303. Eligible Agencies

A. In addition to training, Act 562 of the 1986 Legislative Session provides for "assistance" to local law enforcement agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6305. Eligible Purchases

A. Assistance funds may be used to purchase law enforcement or criminal justice-related equipment. These purchases may include, but are not limited to, the following items: portable radios, computer equipment, monitors, printers, scanners, electronic word processors, target systems (no targets), audio-visual equipment, television, VCR, telefax machines, training equipment and supplies, textbooks and manuals, surveillance equipment/cameras (grants for surveillance equipment will require a special condition), body armor (bullet-proof vests), and metal detectors. Video cameras, laptop computers, radio equipment (not radar), and cellular telephones are allowable for police automobiles.

B. When funds are used for portable radios, computers, etc., POST will allow accessories to be purchased with grant funds when used in purchasing a whole package. Example: portable radio with microphone, battery pack and carrying case, etc. It is restricted to purchase a microphone without purchasing the whole package.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6307. Funding Restrictions

A. There is a general restriction prohibiting the funding of the following items:

1. all mobile vehicles (automobiles, vans, airplanes, boats, etc.), gasoline, tires, automobile repair and maintenance, insurance, uniforms, leather and accessories, firearms, tazers, and ammunition;

2. all office equipment and furniture: desks, typewriters, file cabinets, chairs, tables, credenzas, lamps, copiers, etc. Certified training academies may purchase copiers, student desks and/or chairs and file cabinets for proper storage of training records;

3. equipment purchased solely for recreational purposes is ineligible for funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6309. Renovation

A. Act 562 assistance funds may not be used for renovation. Exceptions to this prohibition may be made by the full commission, if renovations are needed for a locally-funded, accredited academy to maintain compliance with POST standards and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6311. Training

A. In lieu of equipment purchases, a regional planning district may request funding to reimburse for in-service, specialized and advanced training costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

§6313. Liquidation Period

A. The liquidation period for all Act 562 assistance grants shall be June 1 of each fiscal year. Use of residual funds during the year-end liquidation period is limited to those agencies who submit revenues on a regular basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:2045 (November 2006).

Michael A. Ranatza
Executive Director

0611#017

RULE

Office of the Governor Division of Administration Office of Community Development

Local Government Assistance Program (LAC 4:VII.Chapter 23)

Under authority of House Bill 2 (Act 27) of the 2006 Regular Legislative Session, and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Division of Administration, Office of Community Development has adopted LAC 4:VII.Chapter 23.

The Rule will serve as guidelines for units of local government to apply for grants from the Office of Community Development for infrastructure related projects. The Rule addresses the following areas of purpose, application process, payments and reimbursements, and programmatic assurances.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 23. Local Government Assistance Program

§2301. Purpose

A. The Local Government Assistance Program (LGAP) provides financial assistance to local units of government in rural areas. The LGAP program will be administered by the Office of Community Development (OCD).

B. All municipalities and parishes within the state of Louisiana are eligible to apply for assistance except the following HUD (Housing and Urban Development) entitlement cities: Alexandria, Baton Rouge, Bossier City, Kenner, Lafayette, Lake Charles, Monroe, New Orleans and Shreveport.

C. Local government classifications are defined as: Villages (pop. 1-999), Towns (pop. 1,000-4,999), Cities (pop. 5,000-35,000) and Parish governments.

D. OCD shall develop an application procedure satisfying the purposes and intentions of the LGAP.

E. The Office of Community Development applies the following guidelines to any project or activity funded.

1. At the start of each fiscal year, the executive director of OCD shall determine the equal funding level for all eligible parishes based on the total amount budgeted as aid to local governments for LGAP grants.

2. Applications will only be accepted for the following eligible activities; fire protection, sewer, water, renovations to essential governmental buildings, police protection, land acquisition, demolition, equipment, roads, drainage, and reasonable engineering costs (if associated with construction).

3. In some cases, an exception may be made to the eligible activities. In those instances, an overwhelming case must be made for the need for the project and documentation must be included which supports that the project will alleviate the identified health, safety, or quality of life concerns of the citizens of the locality.

4. Funds from this program cannot be used to pay consulting fees charged to a unit of government for the preparation of the application, for administrative costs by agents of the project sponsor or any third party. Also, funds cannot be used to pay for previously incurred debt, improvements to private property, overtime for government employees, administration, engineering only or planning only projects. LGAP funds are not intended for salary only projects or ongoing salaried positions.

5. Parish governments may request funding for projects that serve a parish-wide area or an unincorporated area within the parish.

6. Applicants may not exceed stated funding levels as outlined in the LGAP application guidelines for any fiscal year, except in those circumstances where other eligible applicants within each parish agree by resolution to allow funding levels to be exceeded.

7. Two-year contracts shall be issued for LGAP grants by OCD. Contract extensions and changes to the project must be requested in writing by the grantee and approved in writing by the executive director of OCD.

AUTHORITY NOTE: Promulgated in accordance with Act 27 of the 2006 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 32:2045 (November 2006).

§2303. Application Process

A. LGAP applications are available from the Office of Community Development to all municipalities and parishes that request them. All requests for information may be submitted via mail to the Office of Community Development, P.O. Box 94095, Baton Rouge, LA 70804-9095.

B. Applications will be rated by OCD staff and award amounts will be based upon predetermined internal rating criteria.

C. All applicants must be authorized by law to perform governmental functions, and must be subject to state audit.

D. The most recent available population figures are used to determine the eligibility for funding of municipalities based on appropriations by the legislature (the funding is outlined in OCD application guidelines for LGAP funds).

E. There will be a level of funding set aside for applications that are determined to be of an emergency nature. Any unused emergency funds will be reallocated through the regular program.

AUTHORITY NOTE: Promulgated in accordance with Act 27 of the 2006 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 32:2046 (November 2006).

§2305. Payments and Reimbursement

A. Grant recipients are required to maintain an audit trail verifying that all funds received under this program were used to fulfill the stated purpose identified in the approved application.

B. Payment shall be made to the grantee upon production of invoices and approval of the grantee's request for payment by OCD, according to the contract.

C. Use of grant funds for any project other than that described in the contract will be grounds for OCD to terminate the contract and revoke the funds for the project.

D. All invoices related to the project are the responsibility of the grantee, and must be submitted to and approved by OCD before the funds will be released to the grantee. The grantee remains responsible for payments to its vendors.

AUTHORITY NOTE: Promulgated in accordance with Act 27 of the 2006 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 32:2046 (November 2006).

§2307. Programmatic Assurances

A. The grantee will hold harmless the State of Louisiana, Division of Administration, Office of the Governor, and Office of Community Development as a term and condition of the contract.

B. OCD will de-obligate funds from any unexpended amount; whether by failure to start a project in the agreed upon time frame in the contract or by unexpended funds in an officially closed project, or from revoked grant awards. All de-obligated funds will be reallocated through the regular program.

C. Failure of the grantee to abide by any article of the local agency assurances section of the grant application or the contract, including state audit procedures, federal and state laws, state ethics rules and policy guidelines of OCD, shall result in revocation of the grant award and the grantee will be required to repay the project funds to OCD.

D. No grantee will be allowed more than two open LGAP grants.

E. The grantee will assure that it will comply with R.S. 24:513 (State Audit Law), and state of Louisiana public bidding procedures, as well as comply with all other relevant federal and state laws, executive orders, and/or regulations. Failure to comply with any part of this contract will result in termination of this grant and will require that all funds paid be returned to the Office of Community Development.

AUTHORITY NOTE: Promulgated in accordance with Act 27 of the 2006 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 32:2046 (November 2006).

Michael Taylor
Director

0611#054

RULE

Office of the Governor Division of Administration Office of Facility Planning and Control

Capital Improvements Projects Procedure Manual (LAC 34:III.101, 105, 107, 109 and 113)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of R.S. 39:121, The Division of Administration, Facility Planning and Control has amended Title 34, Government Contracts, Procurement and Property Control, Part III, Facility Planning and Control, Chapter 1, Capital Improvement Projects, Subchapter A., Procedure Manual. These rule changes are the result of a review by Facility Planning and Control of the potential liability assumed by the state of Louisiana by taking responsibility for geotechnical investigation, topographic surveys and other site surveys by having them prepared and providing them to the designer. The increasing use of these surveys to make design decisions that are properly part of the designer's responsibility has increased the potential liability for the state and prompted this change. The change will make geotechnical investigation, topographic surveys and other site surveys part the designer's contract and make him fully responsible for them. He will be reimbursed by the owner for the direct cost.

This review also indicated the need to clarify the language regarding how the designer's compensation is affected by changes in the construction cost estimate and change orders. The changes will reduce the potential for unwarranted charges.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 1. Capital Improvement Projects

Subchapter A. Procedure Manual

§101. Condition of the Contract

A. The Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 2006 Edition, herein referred to as the "procedure manual" or the "manual" and any amendments thereto, as published by Facility Planning and Control, shall be a part and condition of the contract between owner and designer, herein referred to as the "contract."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849

(September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006).

§105. Owner-User Agency Responsibilities

A. - C.1.e. ...

2. The owner shall reimburse the designer, in addition to the fee, the cost of site surveys described in §113.A.1.d when deemed necessary by the designer and agreed to by the owner. These shall include, but not be limited to, a topographic survey prepared by a registered land surveyor and a geotechnical investigation prepared by a professional engineer.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006).

§107. Construction Budget (AFC)

A. - B. ...

C.1. At the completion of the program completion phase, as stated hereinafter in §113, the designer shall determine whether the funds available for construction are realistic for the project when compared with the completed program. At this point, or at any other submissions of probable construction cost by the designer, if such probable construction cost is in excess of funds Available for Construction (AFC), the owner shall have the option to:

a. instruct the user agency to collaborate with the designer to revise the program so that it will be within the funds available for construction; such program revisions shall be done without additional compensation to the designer, except as provided in §113.C.4, hereinafter;

b. provide additional funds to increase the funds available for construction (AFC); or

c. abandon or suspend the project.

2. Any adjustment in the funds available for construction during design shall include an appropriate adjustment in the fee.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006).

§109. Compensation

A. - B.1. ...

2. Routine change orders which involve a small amount of effort will not involve extra compensation. Before the designer prepares a change order for which he feels he is entitled to extra compensation due to the extra effort involved, he shall so notify the owner and secure owner's approval to proceed with the change order. When final payment is made to the designer, all such change orders will be reviewed by the owner and the designer's contract will be amended to reflect extra compensation for the change orders which the owner has determined merit additional fee. The fee will be computed by increasing the contract award by the amount of change orders that qualify for additional fee as described above and recalculating the fee.

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:1077 (May 2005), LR 32:2047 (November 2006).

§113. Designer's Services

A. - A.1.c. ...

d. The designer shall, as part of this contract, provide all geotechnical investigations, topographic surveys and other site related information necessary for the design of the project. The designer shall obtain one or more proposals from registered land surveyors and geotechnical engineers when required for the project and recommend to the owner for his approval. The owner will contract directly for such services or may, with the agreement of the designer, include them in the designer's contract to be paid separately from the fee.

A.1.e. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:475 (September 1982), amended LR 11:851 (September 1985), LR 31:1079 (May 2005), LR 32:2048 (November 2006).

Jerry Jones
Director

0611#013

RULE

Office of the Governor Division of Administration Office of Facility Planning and Control

Demolition or Disposing of State-Owned Buildings (LAC 34:III.701)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of R.S. 39:121, the Division of Administration, Office of Facility Planning and Control has amended LAC 34:III.701, Demolition or Disposing of State-Owned Buildings. This rule change is the result of Act 13, 2006 which gives the Director of Facility Planning and Control the authority to approve immediate demolition of buildings under emergency conditions. Three typographic errors have also been corrected.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 7. Demolition or Disposing of State-Owned Buildings

§701. Preface

A. Act 537 of 1982 enacted R.S. 38:2212.2 to provide for the demolition of state buildings. The statute prohibits the demolition of state buildings unless the appropriate legislators have been notified and unless disposition has been approved by the Office of Facility Planning and

Control (FPC). Following are the procedures adopted and promulgated pursuant to this statute.

1. - 3. ...

4. Copies of the field engineer inspection report are sent to the user agency and to the Louisiana Property Assistance Agency. Contents of the report may require a response from the agency.

5. If it is determined by the office of facility planning and control that a building or structure has been damaged as a result of fire, hurricane, or natural disaster and imminent danger is presented to life or property, the director of facility planning and control, division of administration, may approve a request to raze or demolish a building or structure immediately after legislative notification has been issued.

6. If capital outlay funds are to be used for demolition, Facility Planning and Control will authorize contracts to be awarded for the demolition. When the demolition has been completed, Facility Planning and Control will notify the State Land Office and Office of Risk Management so the building can be removed from the statewide building inventory and insurance coverage will be deleted.

7. If other than capital outlay funds are to be used, the user agency will be responsible for demolition of the structure in accordance with state purchasing laws and regulations. When the demolition has been completed the user agency must notify the State Land Office and the Office of Risk Management so the building can be removed from the statewide building inventory and insurance coverage will be deleted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 20:47 (January 1994), amended LR 32:2048 (November 2006).

Jerry W. Jones
Director

0611#014

RULE

Office of the Governor Division of Administration Office of Facility Planning and Control

Performance Based Energy Efficiency Contracting (LAC 34:V.105)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of R.S. 39:1490(B), the Division of Administration, Office of Facility Planning and Control hereby amends Title 34, Government Contracts, Procurement and Property Control, Part V, Procurement of Professional, Personal, Consulting and Social Services, Chapter 1, Procurement and Property Control, Part V, Procurement of Professional, Personal, Consulting and Social Services, Subchapter A, General Provisions. This Rule change amends the previous Rule so as to comply with Act 604 of the 2006 Regular Session of the Louisiana Legislature. The effect of this Rule change is to remove the Department of Natural Resources from the process of review and evaluation of performance based

energy efficiency contracts and removes the requirement that the commissioner of administration consult with the DNR to adopt rules and regulations to implement the performance-based energy efficiency contract process.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part V. Procurement of Professional, Personal, Consulting and Social Services

Chapter 1. Procurement of Professional, Personal, Consulting and Social Services

Subchapter A. General Provisions

§105. Performance-Based Energy Efficiency Contracting

A. Preparation of Requests for Proposals

1. Performance contracts shall be considered to be consulting services contracts under the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and shall be awarded in accordance with the provisions of that Chapter, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section.

2. Prior to its preparation of an RFP, a state agency, as defined in R.S. 39:2 (hereinafter, "user agency") shall perform a needs analysis in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by the Division of Administration, through its Office of Contractual Review ("OCR") pursuant to that Chapter. Such needs analysis shall be in a form approved by the Commissioner of the Division of Administration or his designated agent and shall include a detailed audit of energy use.

3. Prior to its preparation of an RFP, a user agency shall submit its needs analysis to the Commissioner of the Division of Administration or his designated agent for approval.

4. Upon approval of a user agency's needs analysis pursuant to this Section, such user agency shall prepare an RFP in a form approved by OCR, which form shall require proposers to separately itemize the costs and savings associated with each proposed energy cost savings measure ("ECSM"). In accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by OCR pursuant to that Chapter, every RFP shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the performance contract, the criteria to be used in evaluating the proposals and the time frames within which the work must be completed. Prior to advertising its RFP, a user agency shall submit it to the Commissioner of Administration or his designated agent and obtain his written consent to the advertisement of the RFP.

5. Upon approval of a user agency's RFP, such user agency shall advertise its RFP in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by OCR pursuant to that Chapter.

B. Evaluation of Submitted Proposals

1. A user agency shall review any proposals it timely receives in response to its RFP and shall submit to the Office of Facility Planning and Control ("FPC") the results of its review, along with each proposal that is responsive and responsible and otherwise in accordance with the provisions

of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. A user agency shall not make a final selection from among the proposals it submits to FPC.

2. Prior to the award of any performance contract, FPC shall evaluate all proposals submitted by a user agency for that performance contract. In its evaluation, FPC shall include suggestions, if appropriate, for the resolution of any unique issues arising in connection with a particular proposed performance contract. FPC's evaluation shall also include, but not be limited to, a consideration of the following:

a. whether proposed ECSMs are in compliance with the provisions of R.S. 39:1496.1;

b. whether proposed ECSMs will generate net savings, as those terms are defined in Subsection E of this Section; and

c. whether the proposed protocol for measuring and verifying the energy savings guaranteed in the contract conforms to the latest standards set forth by the International Performance Measurement and Verification Protocol.

3. FPC shall, within 60 days of the receipt of the submitted proposals, forward to the Commissioner of Administration or his designated agent its written evaluation of the submitted proposals, along with the results of the review of the submitted proposals by the user agency. FPC shall not make a final selection from among the proposals it forwards to the Commissioner of the Division of Administration except if FPC has been designated as the Commissioner's agent for that specific purpose.

4. Prior to the award of any performance contract, the Commissioner of the Division of Administration or his designated agent may retain an independent consultant in accordance with this Section. Such independent third-party consultant shall evaluate all proposals and written evaluations submitted to the Commissioner of the Division of Administration or his designated agent. Such evaluation shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. After completing its evaluation, an independent consultant shall submit to the Commissioner of the Division of Administration or his designated agent the written results of such evaluation. An independent consultant shall not make a final selection from among the proposals it evaluates.

5. Prior to retaining an independent third-party consultant pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall require every proposed independent consultant to execute a written certification verifying that he or she has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency. Such written certification shall be in a form approved by the legislative auditor. In order to assist the legislative auditor in verifying the independence of a proposed independent consultant, such proposed independent consultant shall provide to the legislative auditor any documentation or information the legislative auditor requests. A proposed independent consultant shall not be retained, unless the legislative auditor has determined that such proposed

independent consultant has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency.

6. After completing his review of the submitted proposals and evaluations prepared by the independent consultant, if any, pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall provide written notification to a user agency that the Commissioner of the Division of Administration or his designated agent has consented to the award of a performance contract to a specified energy services company ("ESCO") or that he has not consented to the award of a performance contract. Pursuant to the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section, such consent shall be given to the responsible ESCO whose proposal is determined by the Commissioner of the Division of Administration or his designated agent to be the most advantageous to the state of Louisiana, taking into consideration all of the evaluation factors set forth in the RFP, as well as any evaluations or recommendations provided by the user agency, and the independent consultant, if any. In the event that the Commissioner of the Division of Administration or his designated agent determines that consent to the award of a performance contract would not be advantageous to the state of Louisiana, he shall provide the user agency with written reasons for his decision to withhold his consent.

7. Except as explicitly set forth in this Section, no party shall disclose information derived from submitted proposals prior to the consent by the Commissioner of the Division of Administration or his designated agent to the award of a performance contract to a specified ESCO.

C. Negotiation of Performance Contracts

1. A user agency shall negotiate with an approved ESCO a performance contract in a form approved by OCR. The process of such negotiation shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. The Commissioner of the Division of Administration or his designated agent may require that an independent consultant retained pursuant to this Section participate on behalf of a user agency in the negotiation of a performance contract with an approved ESCO.

a. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall set forth the total units of energy saved, the method, device or financial arrangement to be used to establish the amount of such savings, the cost per unit of energy and, if applicable, the basis for any adjustment in the cost per unit of energy during the term of the contract.

b. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall, with respect to each ECSM included in such performance contract and in addition to fulfilling any other requirements set forth in this Section, state the following:

i. the detailed scope of work to be performed pursuant to the performance contract;

- ii. the initial price to be paid by the user agency;
- iii. the annual energy cost savings guaranteed by the ESCO;
- iv. the annual maintenance savings guaranteed by the ESCO, including, but not limited to, services, parts, materials, labor and equipment;
- v. the annual new maintenance costs, including operating expenses added as a result of new equipment installed or service performed by the ESCO; and
- vi. the total annual savings guaranteed by the ESCO. *Total annual savings* means annual energy cost savings plus annual maintenance savings minus annual new maintenance costs.

c. Notwithstanding any other provisions of this Section, no payment shall be made to an ESCO pursuant to a performance contract unless such performance contract complies with Paragraph C.1.

2. The term of every performance contract negotiated pursuant to this Section and term of any obligation incurred by a user agency to fund a performance contract shall be for a period equal to the lesser of 20 years or the average life of the equipment installed by the ESCO and shall contain a guarantee of energy savings, which guarantee shall, at a minimum, ensure total annual savings sufficient to fully fund any financing arrangement entered into pursuant to such performance contract.

3. Every performance contract negotiated pursuant to this Section shall contain the following clause: "The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the agency, board or commission except for payments which have been earned prior to the termination date."

4. A user agency shall submit a negotiated performance contract to OCR for its review and approval. A user agency's submission of a negotiated performance contract shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section.

5. At the time a performance contract is executed, the contracting ESCO shall submit a certified or cashiers check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 2 1/2 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

D. Audits of Performance Contracts

1. An ESCO that enters into a performance contract shall provide the user agency with all performance information and other reports required by the performance contract.

a. An ESCO's reports to the user agency shall conform with the standards of the International Performance Measurement and Verification Protocol.

b. An ESCO's reports to the user agency shall, in addition to fulfilling any other requirements set forth in its performance contract or in this Section, state the following:

- i. the name of the user agency;
- ii. the ESCO's name and address;
- iii. whether the payment obligation under the performance contract is either:

(a). set as a percentage of the annual energy cost savings attributable to the services or equipment under the performance contract; or

(b). guaranteed by the ESCO to be less than the annual energy cost savings attributable to the services or equipment under the performance contract;

iv. the total annual savings guaranteed by the ESCO;

v. the total amount the user agency is required to pay under the performance contract and the term of the contract;

vi. the total amount paid to date by the user agency and the amount paid each year to date under the performance contract;

vii. any costs paid by the user agency which were associated with the set-up or maintenance of the performance contract or with repair or maintenance of the equipment used under the performance contract;

viii. the annual cost to the user agency of energy or other utilities beginning two years prior to operation of the performance contract and during the operation of the performance contract; and

ix. the annual energy cost savings each year, shown also as a percentage of the annual amount to be paid by the user agency under the performance contract. When calculating annual energy cost savings, maintenance savings shall be included. *Maintenance savings* means operating expenses eliminated and future capital replacement expenditures avoided by the user agency as a result of new equipment installed or services performed by the ESCO.

2. Upon a request by a user agency, by the Commissioner of the Division of Administration or his designated agent or by the legislative auditor, an ESCO shall provide any working documents, accounting records or other materials relating to costs, pricing or any other aspect of the ESCOs performance pursuant to a performance contract. Documents, records and other materials provided by an ESCO in accordance with this Section shall be subject to review and verification by a user agency, by the Commissioner of the Division of Administration or his designated agent, by the legislative auditor, or by an independent third party selected by a user agency, by the Commissioner of the Division of Administration or by the legislative auditor.

3. User agencies shall provide to the legislative auditor copies of all performance information and other reports submitted by an ESCO pursuant to a performance contract or this Section. The legislative auditor shall conduct periodic audits of performance contracts, both during the term of such performance contracts and upon the completion of such performance contracts.

E. Retention by User Agencies of Net Savings Generated by Energy Cost Savings Measures

1. Pursuant to R.S. 39:254.B(1), a user agency that is able to demonstrate net savings from implementing an ECSM by means of a performance contract may retain its net savings relating to such ECSM, until the investment costs of implementing the ECSM are paid in full, and thereafter may retain one half of such net savings over the remaining useful life of the ECSM. Such retained net savings shall be from funds appropriated or allocated to the user agency for utility costs.

2. The Commissioner of the Division of Administration or his designated agent shall develop and promulgate such rules and regulations as are necessary to provide for the measurement and verification of net savings relating to ECSMs.

3. For the purposes of these rules, ECSM refers to a repair, equipment modification, procedure, course of action or other step taken which lowers energy costs.

4. For the purposes of these rules, *net savings* from the implementation of ECSMs shall be defined as measurable and verifiable energy cost savings that directly result from such implementation and shall be determined in accordance with the following provisions.

a. ESCOs shall employ energy savings measurement techniques that embody the best practical methods of determining net savings generated by the ECSMs to be evaluated. Such measurement techniques shall be fully defined and set forth in the RFP and performance contract that includes the ECSMs. In selecting a measurement technique, an ESCO shall consider the complexity of the ECSM to be evaluated and other factors that may affect energy use, such as changes in the mission of a facility, population, space utilization and weather.

b. Energy savings measurement may be based upon estimates, calculations or computer models, if metering is not practical.

c. Every RFP and performance contract shall set forth in detail the method to be used by an ESCO in order to determine the unit energy costs by which an energy baseline and energy savings are to be multiplied. For the purposes of these rules, an energy baseline shall be defined as the amount of energy that would be consumed annually without implementation of a given ECSM and shall be based upon historical metered data, engineering calculations, submetering of buildings or other energy-consuming systems, building load simulations, statistical regression analysis, or some combination of these methods.

d. The selection of every energy savings measurement technique and method of determining unit energy costs or energy baseline shall be subject to the approval of the Commissioner of the Division of Administration or his designated agent, who shall have the authority to modify such techniques and methods if he determines, in his sole discretion, that such modification is warranted by changed conditions or other circumstances affecting the accuracy or appropriateness of such techniques and methods.

e. Net savings must be real savings of money that the state of Louisiana either is currently spending or has budgeted to spend in the future. Such money must be available in the state's budget for payments against the performance contract involved. Net savings may be either recurring or one-time cost savings.

f. Examples of net savings shall include, but not be limited to, recurring operation, maintenance and repair tasks, which are currently performed by the state or its agents and which are directly related to the energy-consuming system affected by an ECSM. The savings associated with such tasks shall be net savings, if the ESCO assumes such tasks, reduces the burden of such tasks or eliminates such tasks. The Commissioner of the Division of Administration or his designated agent shall determine whether an ESCO's action with respect to a given recurring task generates net savings and shall determine the value of such net savings.

g. Net savings may also include one-time cost savings of money budgeted by the state and available to fund a project or task that is made unnecessary by the implementation of an ECSM. The Commissioner of the Division of Administration or his designated agent shall determine whether an ESCO's action with respect to a given one-time project or task generates net savings and shall determine the value of such net savings.

h. Any utility company rebates or other incentives arising in connection with the implementation of an ECSM shall be the property of the user agency. An ESCO shall provide any assistance necessary in order to permit a user agency to apply for and receive such rebates or other incentives.

F. Grandfathered Performance Contracts

1. Notwithstanding any other provision of this Section, where an RFP or a proposed performance contract is exempt from the application of Subparagraphs (a) through (d) of R.S. 39:1496.1.E(1), the selected ESCO shall, at the time a performance contract is executed, submit a certified or cashier's check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 1 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

2. Where an RFP or a proposed performance contract is exempt from the application of Subparagraphs (a) through (d) of R.S. 39:1496.1.E(1), such RFP or proposed performance contract shall not be subject to the application of Subsection A or B of this Section but shall be subject to the remaining provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office Facility Planning and Control, LR 31:640 (March 2005), amended LR 32:2049 (November 2006).

Jerry W. Jones
Director

0611#047

RULE

Office of the Governor Division of Administration Office of Information Technology

Submitting and Receiving Electronic Bids (LAC 4:XV.Chapter 7)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to comply with the legislative mandates of Act 831 of the 2003 Regular Session and Act 203 of the 2006 Regular Session of the Louisiana Legislature, the Office of the Governor, Division of Administration, Office of Information Technology (OIT), has adopted standards relative to submitting and receiving electronic bids.

Title 4

ADMINISTRATION

Part XV. Information Technology

Chapter 7. Submitting and Receiving Electronic Bids for Public Works Contracts and for the Purchase of Materials and Supplies by Political Subdivisions

§701. General Provisions

A. Electronic bid is to be an alternative, rather than exclusive, method to a paper bid.

B. In addition to including the information required for paper bidding, when accepting bids electronically, the advertisement must:

1. specify any special condition or requirement for the submission;

2. contain the electronic address of the public entity.

C. Online Service Provider Minimum Requirements

1. Compliance with applicable law and rules:

a. Public Works contract law—R.S. 38:2212;

b. materials and supplies contract law—R.S. 38:2212.1;

c. the Louisiana Uniform Electronic Transaction Act—R.S. 9:2601-2619, particularly R.S. 9:2619(A) which provides that the commissioner of administration shall encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this state, other states, federal government, and nongovernmental persons interacting with governmental agencies of this state [R.S. 9:2619(A)] while recognizing that, if appropriate, standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing most appropriate standard for particular application. [R.S. 9:2619(B)];

d. Louisiana Administrative Code, Title 4, Part XV, Chapter 7—"Implementation of Electronic Signatures in Global and National Commerce Act—P.L. 106-229";

e. security standards promulgated by the Office of Information Technology of the state's Division of Administration.

2. Be accessible over Internet via a modem or a network connection.

3. Be available daily, 7 days a week, 24 hours daily, except for maintenance, and be reliable with better than 99.95 percent uptime with backup.

4. Provide two-way service—publishes on the Internet public works bid-related information from the political subdivision to the contracting community, and allows online, secure public works bid submission from the contracting community to the political subdivision.

5. Automatically send bid receipt to bidder whenever a bid is submitted to the provider, with the receipt digitally signed by the provider and using the same technology used by the bidder to sign the bid.

6. Have accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

7. Ensure that bid cannot be read by anyone until the public bid opening. When bid is submitted to the provider, bid must be encrypted before sending using the political subdivision's key. Encryption level must ensure security.

8. Ensure that if a bidder requests that an electronic bid be withdrawn before the bid deadline, it will not be passed on, or be accessible, to the political subdivision.

9. Ensure that only the last electronic bid submission from a person is kept and passed on, or made accessible, to the political subdivision.

10. Ensure that bid is not passed on, or accessible, to political subdivision until the public bid opening.

11. Enable electronic bid bond submission and verification with at least two participating surety agencies.

12. Ensure secure digital signature.

13. Uses public/private key pair technology for encrypting and digitally signing documents.

14. Provide telephone support desk, at a minimum, from 8 a.m. to 7 p.m., Monday through Friday, except for legal holidays. Provides voice mail after business hours with messages being addressed the next business day. E-mail and fax support addresses are available 24 hours a day and be answered the next business day.

AUTHORITY NOTE: Promulgated in accordance with Act 831 of the 2003 Regular Session of the Louisiana Legislature and Act 203 of the 2006 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 32:2052 (November 2006).

Rizwan Ahmed
Chief Information Officer

0611#055

RULE

Office of the Governor Louisiana Recovery Authority

Policies of Operation (LAC 4:VII.Chapter 25)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Louisiana Recovery Authority, pursuant to authority vested in the Louisiana Recovery Authority by R.S. 49:220.1 et seq., adopted Rules governing the Louisiana Recovery Authority Board, LAC 4:VII (Chapter 25), to provide for the operation and governance of the Louisiana Recovery Authority Board and task forces and committees of the board.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 25. Louisiana Recovery Authority

§2501. Board Members, Terms of Office, Expense Reimbursement

A. The Louisiana Recovery Authority Board shall provide leadership and oversight for the activities of the Louisiana Recovery Authority. The board shall consist of 33 members. Twenty-nine members shall be appointed by and serve at the pleasure of the governor subject to Senate confirmation with no less than two members appointed from each congressional district. In addition to the appointed members, the speaker and speaker pro tempore of the House of Representatives and the president and president pro tempore of the Senate, or their designees who shall be members of the Louisiana Legislature, shall be members of the board.

B. Appointed board members shall serve six year staggered terms. Of the initial members appointed, no more than nine members shall serve terms of two years, no more than 10 members shall serve terms of four years and no more than 10 members shall serve terms of six years, as designated by the governor.

C. Vacancies in the office of an appointed board member shall be filled in the manner of the original appointment for the remainder of such term.

D. Appointed members of the board shall serve without compensation, but may be reimbursed for reasonable and necessary travel expenses upon the approval of the chairman in accordance with the State General Travel Regulations, PPM 49. Ex officio members of the board may seek per diem and mileage reimbursement in accordance with the rules of his respective house of the legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Recovery Authority, LR 32:2053 (November 2006).

§2503. Selection of Chairman and Vice Chairman, Election of Other Officers

A. The chairman and vice chairman of the board shall be selected by the governor. The board may elect other officers as it deems necessary to provide functions required as assigned by the board.

B. The chairman of the board shall be the principal executive officer of the board and shall, in general, supervise and control all of the business and affairs of the board. The chairman shall, when present, preside at all meetings and shall perform duties incident to the office of the chairman and other such duties as may be prescribed by the members of the board from time to time.

C. The vice chairman shall perform the duties of the chairman in the absence of the chairman or in the event of his death, inability, or refusal to act. When acting as the chairman, the vice chairman shall have all the powers of and be subject to all the restrictions placed upon the chairman. The vice chairman shall perform such other duties as from time to time may be assigned to him by the chairman or members of the board.

D. In the event the board creates the office of secretary, the secretary shall keep the minutes of the meetings in one or more books provided for that purpose, see that all notices are

duly given in accordance with the provisions of state law, be custodian of the board records and keep a register of the post office address of each member which shall be furnished to the secretary by such member, and, in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the chairman or by the members of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Recovery Authority, LR 32:2053 (November 2006).

§2505. Meetings

A. The board shall meet according to a schedule established by the board, at the call of the chairman, and as otherwise provided by the board.

B. Notice of meetings shall be given to board members and to the general public in accordance with R.S. 42:7.

C. All meetings of the board shall be open, except as otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Recovery Authority, LR 32:2054 (November 2006).

§2507. Committees and Task Forces

A. The board shall appoint an audit committee to ensure best practices and procedures in the management of any funds received, expended, or disbursed by the Louisiana Recovery Authority. The audit committee shall receive and review all reports produced by the inspector general, the legislative auditor, the independent accounting firm or firms engaged by the state or any agency of the state, and by any audit firm or firms retained by the Louisiana Recovery Authority. The audit committee shall present all findings of such reports to the board and make recommendations to the board as appropriate.

B.1. In addition to the audit committee, the board may also create task forces and committees as appropriate which may include members of the board and other stakeholders and conduct work through the use of such task forces and committees, provided that all final decisions shall be by a vote of the board.

2. Task forces and committees shall include, but not be limited to, the following subject areas:

- a. Economic and Workforce Development;
- b. Public Safety;
- c. Infrastructure and Transportation;
- d. Housing;
- e. Environmental;
- f. Public Health and Healthcare;
- g. Human Services;
- h. Education;
- i. Long Term Community Planning;
- j. Federal Legislation;
- k. State and Local Legislation;
- l. Coastal Protection.

C. The chairman of the board shall appoint the chairman, vice chairman, and members of each task force and committee and shall also appoint members to fill vacancies

created on task forces and committees, unless otherwise provided by law or these rules.

D. Task forces and committees shall meet at the call of their respective chairman and as otherwise provided by the board.

E. Notice of meetings shall be given to task force and committee members and to the general public in accordance with R.S. 42:7.

F. All meetings of the task forces and committees shall be open, except as otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Recovery Authority, LR 32:2054 (November 2006).

§2509. Rules of Order

A. All meetings of the board, committees, and task forces shall be conducted in accordance with *Robert's Rules of Order*, unless otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Recovery Authority, LR 32:2054 (November 2006).

§2511. Manner of Acting

A. The act of the majority of the members present at a meeting at which a quorum is present shall be the act of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Recovery Authority, LR 32:2054 (November 2006).

§2513. Voting

A. Each member of the board entitled to vote as provided by law shall be entitled to one vote, which he must be present to cast. The vote for officers and upon any question before the meeting shall be by viva-voce and shall be recorded in the meeting minutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Recovery Authority, LR 32:2054 (November 2006).

§2515. Order of Business, Public Comments

A. The order of business for all meetings shall be as follows:

1. roll call;
2. reading and approval of minutes of preceding meeting;
3. reports of officers;
4. reports of committees or task forces;
5. unfinished business;
6. public comment;
7. new business;

B. The board shall receive public comments from interested individuals who have submitted cards requesting time to speak regarding an agenda item before the board, prior to taking a vote on such item. The board may also allow for public comments at other times during a board meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Recovery Authority, LR 32:2054 (November 2006).

Andy Kopplin
Executive Director

0611#059

RULE

Office of the Governor Office of Financial Institutions

Corporate Title
(LAC 10:I.1301)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Commissioner of the Office of Financial Institutions promulgates the following Rule to implement the parity provisions of R.S. 6:902(B) to provide state chartered savings and loan associations with the same authority consistent with federal associations in furtherance of an incidental to the exercise of the powers of associations chartered by this office.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part I. Financial Institutions

Chapter 13. Powers of Homesteads and Building and Loan Associations

§1301. Corporate Title

A. A federal savings association may use the word "bank" in its title since this word is not considered to misrepresent the nature of this institution or the services it offers. Similarly, R.S. 6:712(A) states that "an association shall not adopt a corporate name which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation." Since savings associations are chartered to conduct the "business of banking," as defined in R.S. 6:2(3), the commissioner deems it necessary and in the best interest of state-chartered associations to grant parity with federal savings associations and allow the inclusion of the word "bank" in their corporate names.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by Office of Governor, Office of Financial Institutions, LR 32:2055 (November 2006).

John Ducrest
Commissioner

0611#043

RULE

Office of the Governor Office of Financial Institutions

Investment Adviser Registration Procedure
(LAC 10:XIII.1301-1311)

The Office of the Governor, Office of Financial Institutions, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and specifically with R.S. 51:703(D) as amended, of the Louisiana Securities Law, (hereinafter referred to as "LSL"), hereby adopts LAC 10:XIII.1301-1311, Investment Adviser Registration Procedure. This text has been adopted to place a requirement on Louisiana state-registered investment adviser firms that in order for such firms to be registered with the commissioner, all of their investment adviser representatives must either satisfy the examination criteria set out in Section 1303 or qualify for one of the waivers set out in Section 1305. This Rule has been adopted to ensure that all investment adviser representatives are properly qualified to provide investment advice to Louisiana citizens. This Rule shall become effective on January 1, 2007.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XIII. Investment Securities

Subpart 1. Securities

Chapter 13. Investment Adviser Registration Procedure

§1301. Definitions

A. *Federal Covered Adviser*—an investment adviser firm required to be registered with the U.S. Securities and Exchange Commission pursuant to Section 203 of the Investment Advisers Act of 1940.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2055 (November 2006), effective January 1, 2007.

§1303. Examination Requirements

A. Any investment adviser firm applying for registration under R.S. 51:703(D), or renewal of any such registration, shall provide the commissioner with proof that each of its investment adviser representatives has met one of the two following examination requirements:

1. successfully passed the Uniform Investment Adviser Law Examination (Series 65 examination); or

2. successfully passed the General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

AUTHORITY NOTE: Promulgated in accordance with R.S.51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2055 (November 2006), effective January 1, 2007.

§1305. Waivers

A. The examination requirement set out in §1303 above, shall not apply to any individual who holds one of the following professional certifications:

1. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) awarded by the CFA Institute;
5. Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association; or
6. such other professional certifications as the commissioner may approve upon written request from an applicant for registration. Such request shall include sufficient information regarding the certifying organization and its requirements, as determined by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007.

§1307. Continuing Education

A. Investment adviser representatives subject to this rule shall complete the continuing education and/or recertification requirements necessary to maintain such examination or professional certification standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007.

§1309. Grandfather Provision

A. Investment adviser representatives of any investment adviser firm registered under R.S. 703(D) on the effective date of this rule need not satisfy the examination or professional certification criteria for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007.

§1311. Exemption

A. The requirements of this rule shall not apply to investment adviser representatives employed by a federal covered adviser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007.

John Ducrest, CPA
Commissioner

0611#031

RULE

Department of Health and Hospitals Board of Dentistry

Dental Hygienist/Anesthesia
(LAC 46:XXXIII.701 and 1507)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.701 and 1507.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 7. Dental Hygienist

§701. Authorized Duties

A. - D. ...

E. In accordance with Act 744 of the regular session of the Louisiana Legislature, effective June 29, 2006, dental hygienists may work under the general supervision of dentists licensed to practice in the state of Louisiana.

F. Under general supervision, a dental hygienist may provide to patients of record, for not more than five consecutive business days, all dental hygiene services (except local anesthesia and root planning which must be under direct supervision) if all of the following conditions are satisfied:

1. the dental hygienist has at least three years, or an equivalent amount of experience, in the practice of dental hygiene;
2. the dental hygienist has current CPR certification and complies with the established protocols for emergencies which the supervising dentist has established;
3. the supervising dentist has examined the patient of record not more than nine months prior to the date that the dental hygienist provides the dental hygiene services;
4. the dental hygienist provides dental hygiene services to the patient of record in accordance with a written treatment protocol prescribed by the supervising dentist for the patient;
5. the patient of record is notified in advance of the appointment that the supervising dentist will be absent from the location;
6. no licensed dental hygienist, under general supervision, may delegate or supervise any dental hygiene duties for an expanded duty dental assistant; and
7. the dentist is responsible for all actions of the dental hygienist during treatment of patients under general supervision.

G. The following limitations also apply to the practice of dental hygiene under general supervision.

1. No entity other than a public institution or school supervised by a Louisiana licensed dentist, or an office owned by a dentist or group of dentists licensed in Louisiana, may employ dental hygienists to provide treatment for patients of record under general supervision.

2. No duly licensed and registered dentist shall supervise more than two dental hygienists under general supervision at any one time.

3. No duly licensed and registered dentist shall supervise a dental hygienist for more than five consecutive business days or for more than 20 total days in any calendar year.

4. No patient can be seen twice consecutively under general supervision.

5. An examination fee must not be charged if a patient is seen under general supervision.

6. No person shall practice dental hygiene in a manner which is separate or independent from a supervising dentist, or establish or maintain an office or a practice that is primarily devoted to providing dental hygiene services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 15:965 (November 1989), LR 19:206 (February 1993), LR 22:22 (January 1996), LR 22:1217 (December 1996), LR 24:1116 (June 1998), LR 27:1892 (November 2001), LR 32:2056 (November 2006).

Chapter 15. Anesthesia/Analgesia Administration

§1507. General Anesthesia/Deep Sedation

A. When general anesthesia or deep sedation are administered, the provisions of this Subsection apply:

1. no dentist shall administer general anesthesia or deep sedation unless said dentist has received authorization by the board evidenced by receipt of a permit from the board;

2. in order to receive authorization the dentist must show and produce evidence that he complies with the following provisions:

a. completion of an oral and maxillofacial surgery training program accredited by the Commission on Dental Accreditation of the American Dental Association which includes anesthesiology and related academic subjects as required in §1509 of this Chapter; or successful completion of a program which complies with Part II of the American Dental Association Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dental Education at the Advanced Level;

b. provide proof of current certification in the cardiopulmonary resuscitation course "Advanced Cardiac Life Support" as defined by the American Heart Association, or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 32:2057 (November 2006).

C. Barry Ogden
Executive Director

0611#058

RULE

Department of Health and Hospitals Board of Medical Examiners

Acupuncturists' Assistants; Licensing and Certification (LAC 46:XLV.2131)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Medical Practice Act, R.S. 37:1270(B) and 37:1275, and the Acupuncturists' Assistants Practice Act, R.S. 37:1360, the Louisiana State Board of Medical Examiners has adopted LAC Title 46:XLV, Subpart 2, Chapter 21, Subchapter F, §2131, to facilitate issuance of a temporary permit allowing the provision of specified voluntary, gratuitous health care services during and following a state declared emergency.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 21. Acupuncturists and Acupuncturists' Assistants

Subchapter F. Restricted Licensure, Permits

§2131. Temporary Permit

A. The board may issue a temporary permit to an acupuncturist's assistant, valid for a period of not more than 60 days, to provide voluntary, gratuitous acupuncture services in this state during a public health emergency and for such periods thereafter as the Louisiana Department of Health and Hospitals ("DHH") shall deem the need for emergency services to continue to exist, at sites specified by DHH or approved by the board.

B. To be eligible for issuance of such a permit an individual shall:

1. hold a current, unrestricted license in good standing issued by the licensing authority of any state to practice as an acupuncturist's assistant;

2. prior to providing such services present or cause to be presented to the board:

a. indisputable personal identification;

b. a copy of his or her license to practice as an acupuncturist's assistant or such other information as may be deemed satisfactory to the board by which to verify state licensure;

c. a completed application containing such information as may be required by the board; and

d. notification of intent to practice on a form provided by the board, signed by a physician licensed to practice medicine in this state who will fulfill the functions of a supervising physician as described in this Section. An individual is responsible for updating the board should any of the information required and submitted on the applicant's notice of intent change after a temporary permit has been issued under this Section.

C. To be eligible for approval as a supervising physician under this Section a physician shall:

1. possess a current, unrestricted license to practice medicine in Louisiana; and
2. submit a completed application containing such information as may be required by the board.

D. Although a physician must notify the board each time the physician intends to undertake the supervision of an acupuncturist's assistant under this Section, registration with the board is only required once. Notification of supervision of new or additional acupuncturist's assistants by a registered supervising physician shall be deemed given to the board upon the acupuncturist's assistant's filing with the board a notice of intent to practice in accordance with §2131.B of this Section.

E. The board shall maintain a list of physicians who are registered to supervise acupuncturists' assistants under this Section. Each registered physician is responsible for updating the board should any of the information required and submitted on the physician's application change after the physician has become registered.

F. An acupuncturist's assistant holding a permit under this Section shall practice in this state only on a voluntary, gratuitous basis, shall perform only those acupuncture services authorized by this Section, and shall practice only at sites specified by DHH or approved by the board.

G. Acupuncture services performed by an individual issued a permit under this Section shall be limited to auricular acupuncture (insertion of disposable needles at a specified combination of points on the surface of the outer ear) utilizing the five-point protocol adopted by the National Acupuncture Detoxification Association and approved by the supervising physician. Such services may be performed under the general direction and supervision, rather than patient-specific order, of the supervising physician. All services shall be documented in written form by the acupuncturist's assistant and available for review by the supervising physician but need not be countersigned. The supervising physician shall be available during normal working hours by telephonic or other means of communication to address any questions or concerns that may arise from the provision of acupuncture services under this Section.

H. A temporary permit may be issued upon such terms, conditions, limitations or restrictions as to time, place, nature, and scope of practice as are, in the judgment of the board, deemed necessary or appropriate to its responsibilities under law. The board may, in addition, waive or modify any of the requirements of Chapters 21 and 51 of these rules, applicable to certification as an acupuncturist's assistant, that it may deem necessary or appropriate to effectuate the purposes of this Section.

I. An acupuncturist's assistant shall visibly display a permit issued under this Section, or such other identifying information as the board may specify, in plain view on his or her person at all times while exercising the privileges of such permit.

J. A temporary permit creates no right or entitlement to certification as an acupuncturist's assistant or renewal of the permit after its expiration. A temporary permit shall expire and become null and void on the earlier of:

1. 60 days from the date on which it was issued;

2. a date specified on the permit less than 60 days from the date of issuance;

3. the date the acupuncturist's assistant's term of voluntary, gratuitous service is terminated; or

4. the date on which the acupuncturist's assistant's relationship with the supervising physician, identified in the notice of intent, terminates.

K. The board may, in its discretion, extend or renew for one or two additional 60-day periods a permit that has expired provided that all conditions prerequisite to original issuance are satisfied.

L. Following termination of a declaration of emergency the board may issue, extend or renew a 60-day permit under this Section during such period as DHH shall deem the need for emergency services to continue to exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1275 and R.S. 37:1360.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 32:2057 (November 2006).

Robert Marier, M.D.
Executive Director

0611#057

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Direct Service Worker Registry (LAC 48:I.Chapter 92)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 48:I.Chapter 92 as authorized by R.S. 40:2179-2179.1. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Health Standards

Chapter 92. Direct Service Worker Registry

Subchapter A. General Provisions

§9201. Definitions

Abuse—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
 - a. sexual abuse;
 - b. exploitation; or
 - c. extortion of funds or other things of value to such an extent that the health, moral or emotional well-being of the individual being supported is endangered; or
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

Department—the Louisiana Department of Health and Hospitals.

Direct Service Worker—an unlicensed person who provides personal care or other services and supports to persons with disabilities or to the elderly to enhance their

well-being, and who is involved in face-to-face direct contact with the person and is compensated through state or federal funds. Functions performed may include, but are not limited to, assistance and training activities of daily living, personal care services, and job-related supports.

Exploitation—the illegal or improper use or management of an aged person's or disabled adult's funds, assets or property, or the use of an aged person's or disabled adult's power-of-attorney or guardianship for one's own profit or advantage.

Extortion—the acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation or abuse of legal or official authority.

Misappropriation—taking possession without the permission of the individual who owns the personal belongings or the deliberate misplacement, exploitation or wrongful temporary or permanent use of an individual's belongings or money without the individual's consent.

Neglect—failure to provide the proper or necessary medical care, nutrition or other care necessary for a person's well-being.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006).

§9202. Introduction

A. The Department of Health and Hospitals (DHH) shall develop and maintain a registry for individuals who have, at a minimum, successfully completed a direct service worker training and competency evaluation, and criminal background check. The registry may also indicate additional training obtained to address specialized needs and/or certified medication attendant (CMA) training.

B. The Direct Service Worker Registry will contain the following items:

1. a list of individuals who have successfully completed a direct service worker training curriculum and competency evaluation. Each individual listed will have the following information maintained on the registry:

- a. name;
- b. address;
- c. Social Security number;
- d. phone number;
- e. place of employment;
- f. date of employment;
- g. date employment ceased;
- h. state registration number; and
- i. documentation of any investigation including codes for specific findings of:

- i. abuse;
- ii. neglect;
- iii. extortion;
- iv. exploitation and misappropriation of property;

and

v. an accurate summary of findings after action on findings are final and after any appeal is ruled upon or the deadline for filing an appeal has expired; and

2. information relative to training and registry status which will be available through procedures established by the Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section (HSS).

C. Registrations are renewable annually. The registry will verify renewals and whether the direct service worker has worked 40 hours in an approved setting within the past 12 consecutive months.

D. Employers must use the registry to determine if a prospective hire is a registered direct service worker and if there is a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006).

Subchapter B. Training and Competency Requirements

§9211. General Provisions

A. The direct service worker required training and competency evaluation must both be approved by DHH/HSS.

B. The required hours of training and competency evaluation may be provided by:

1. the licensed provider employing the direct service worker;
2. community colleges;
3. vocational-technical schools; or
4. other educational facilities.

C. Entities may offer the complete training curriculum themselves or may contract with another approved organization or entity to provide the training and/or competency evaluation.

D. A DSW training program must submit copies of competency evaluations such as protocols and tests to be used with the training curriculum.

E. Direct service workers currently employed by a DSW agency on the effective date of this Rule may be deemed to meet the training and competency requirements if:

1. the employer attests, in writing on the department-approved form, to the worker's competency for all required training components; and
2. the direct service worker has 18 months verifiable work experience providing supports/services to the elderly or people with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006).

§9213. Trainee Responsibilities

A. An individual who has not performed DSW-related services for pay for at least 40 hours in an approved setting within a consecutive 12-month period after completion of a training and competency evaluation or being placed on the registry must, at a minimum, successfully complete a new competency evaluation before he/she can be placed on the DSW Registry.

B. Trainees must take the competency evaluation (through skills demonstration and either written or oral examination) within 30 days after completion of the training curriculum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006).

§9215. Training Curriculum

A. Core Curriculum

1. The curriculum content for the direct service worker training includes material which provides a basic level of both knowledge and demonstrable skills for each individual completing the training. The core curriculum content includes needs of the populations which may be served by the direct service worker.

a. The core curriculum must be a minimum of 16 hours and completion of an approved cardiopulmonary resuscitation (CPR)/First Aide course.

2. Each training curriculum must have behaviorally-stated objectives for each unit of instruction. The unit objectives will be reviewed with the trainees at the beginning of each unit so each trainee will know what is expected of him/her in each part of the training.

B. Minimum Curriculum Requirements

1. The objective of the training curriculum is the provision of quality services by direct service workers who are able to:

a. communicate and interact competently on a one-to-one basis with individuals as part of the team implementing their care objectives;

b. demonstrate sensitivity to the individual's emotional, social, and mental health needs through skillful, directed interactions;

c. assist individuals in attaining and maintaining functional independence; and

d. exhibit behavior to support and promote the rights of individuals.

2. The trainee must have completed the minimum 16 hours of instruction prior to the trainee's direct involvement with an individual receiving services. The 16 hours of training must include, but is not limited to:

a. abuse/neglect/misappropriation of property (unit developed by the department);

b. staff ethics, including:

i. the prohibition against soliciting consumers from other provider agencies;

ii. respectful interactions with people being served; and

iii. the use of "People First Language;"

c. human and civil rights;

d. confidentiality and Health Insurance Portability and Accountability Act (HIPAA) of 1996 requirements;

e. person-centered planning, personal outcomes and self-determination philosophy;

f. incident documentation and reporting;

g. documentation of services, progress notes, etc.;

h. environmental emergency procedures; and

i. infection control/universal precautions.

3. The trainee must complete an approved CPR and First Aide course within 45 days of being hired.

C. Curriculum Approval

1. To get a training curriculum and/or competency evaluation program approved, the entity (provider or school) must submit the following to the department's Health Standards Section:

a. a copy of the curriculum;

b. the name of the training coordinator and his/her qualifications; and

c. a list of any other instructors.

2. If a school is applying for approval, it must identify the place(s) used for classroom instruction and clinical experience.

3. An approved entity (provider or school) must submit any content changes of the training curriculum and competency evaluation to the department for review and approval.

4. If a provider or school, that has an approved curriculum, ceases to provide training and/or competency evaluations, it must notify the department. Prior to resuming the training program and/or competency evaluations, the provider or school must reapply to the department for approval to resume the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006).

§9217. Training Coordinators

A. Every direct service worker training curriculum must have a training coordinator who provides general supervision of the training received by the DSW.

B. The training coordinator must have the following experience or qualifications:

1. a minimum of two years verifiable experience, via work references, in providing supports or services to people with disabilities, the elderly or chronically ill in any setting including, but not limited to:

a. personal care services agency;

b. a community residence;

c. a hospital; or

d. nursing facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006).

§9219. Competency Evaluation

A. The competency evaluation must be developed and conducted to ensure that each direct service worker, at a minimum, is able to demonstrate competencies in the training areas in §9215.A-B.3.a-i.

B. Written or oral examinations will be provided by the training entity or organizations approved by the department.

C. The examination will reflect the content and emphasis of the training curriculum and will be developed in accordance with accepted educational principles.

D. A substitute examination, including an oral component, will be developed for those direct service workers with limited literacy skills. This examination must contain all of the content that is included in the written examination and must also include a written reading comprehension portion that will determine competency to read job-related information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006).

§9221. Compliance with Training and Competency Evaluation

A. The review of compliance with training and competency requirements will include, at a minimum, a review of:

1. training content and length;
2. qualifications of training coordinators; and
3. the written and skills competency evaluation protocols.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006).

Subchapter C. Provider Participation

§9231. Provider Responsibilities

A. Prior to hiring any direct service worker or trainee, a licensed provider must access the registry to determine if the potential hire is registered.

1. The individual may not be hired unless he/she is in good standing on the registry or he/she is a trainee enrolled in a training program of a provider or school that has an approved training curriculum.

B. The provider or school shall not accept a trainee into a training curriculum until they have verified with the CNA and DSW registries that the potential trainee has not had a finding of abuse, neglect or misappropriation of an individual's property placed on either registry.

C. Onsite direct supervision of the direct service worker is required at all times until he/she completes the training and competency evaluation and is placed on the registry.

1. The trainee must complete the required training and competency evaluation and the results must be submitted by the training provider to the department within 60 days of employment with the provider.

D. Any organization responsible for the training and competency evaluation must report to the registry the names of all individuals who have satisfactorily completed the curriculum after their completion of the training. Within 15 days after a direct service worker has successfully completed the training curriculum and competency evaluation, including the approved CPR training, the provider or school shall notify the registry.

E. Providers shall use the appropriate forms designated by the department to notify the registry of:

1. employment or termination of direct service workers; and
2. persons who have completed a DSW training and/or competency evaluation, including CPR training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

Subchapter E. Violations

§9271. Disqualification of Training Programs

A. The department may prohibit DSW training curriculums offered by providers that have demonstrated substantial noncompliance with training requirements including, but not limited to:

1. the qualifications of training coordinators;
2. training curriculum requirements; or
3. failure of 30 percent of trainees to successfully complete competency evaluations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

§9273. Allegations of Direct Service Worker Wrong-Doing

A. The department, through its Bureau of Appeals, has provided for a process of the review and investigation of all allegations of wrong-doing by direct service workers. Direct service workers and trainees must not:

1. use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on an individual being supported; nor
2. neglect an individual or commit exploitation, extortion, or misappropriation of the individual's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

§9275. Notice of Violation

A. When there are substantiated charges against the direct service worker, either through oral or written evidence, the department will notify the individual(s) implicated in the investigation of the following information by certified mail:

1. the nature of the violation(s) and the date and time of each occurrence;
2. the department's intent to report these violations to the DSW Registry; and
3. the right to request an informal discussion and the right to an administrative hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

§9277. Informal Dispute Resolution

A. When a direct service worker feels that he/she has been wrongly accused, the following procedure should be followed.

1. The direct service worker may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the agency's notice of violation. The request for an IDR must be made to the agency in writing.

2. The IDR is designed:

- a. to provide an opportunity for the direct service worker to informally review the situation;
- b. for the agency to offer alternatives based on corrections or clarifications, if any; and
- c. to evaluate the necessity for seeking an administrative hearing.

3. An IDR meeting will be arranged within 20 days of the request.

4. During the IDR, the direct service worker will be afforded the opportunity to:

- a. talk with agency personnel involved in the situation;
- b. review pertinent documents upon which the alleged violation is based;
- c. ask questions;
- d. seek clarifications; and
- e. provide additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

Subchapter F. Administrative Hearings

§9285. General Provisions

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the direct service worker may request an administrative hearing.

1. The request for an administrative hearing must be made in writing to the department's Bureau of Appeals.

2. The request must contain a statement setting forth the specific charges with which the direct service worker disagrees and the reasons for this disagreement.

3. Unless a timely and proper request is received by the Bureau of Appeals, the findings of the department shall be considered a final and binding administrative determination.

a. Notification of the finding of abuse, neglect and/or misappropriation will then be sent to the DSW Registry to be recorded.

B. When an administrative hearing is scheduled, the Bureau of Appeals shall notify the direct service worker, his/her representative and the agency representative in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

- a. date of the hearing;
- b. time of the hearing; and
- c. place of the hearing.

C. The administrative hearing shall be conducted by an administrative law judge from the Bureau of Appeals as authorized by R.S. 46:107 and according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A transcript will be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the transcript.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

- a. call and examine parties and witnesses;
- b. introduce exhibits;
- c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;
- d. impeach any witness, regardless of which party first called him to testify; and
- e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

a. Documentary evidence may be received in the form of copies or excerpts.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. A party has the burden of proving whatever facts he/she must establish to sustain his/her position.

8. The burden of producing evidence to substantiate the written allegation(s) will be on the department and the provider of services, if appropriate.

9. When the allegation(s) supporting removal from the registry is substantiated, the direct service worker may not rest on the mere denial in his/her testimony and/or pleading(s) but must set forth specific facts and produce evidence to disprove or contest the allegation(s).

D. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the provider.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

- a. his/her name;
- b. address;
- c. telephone number; and
- d. the party being represented.

E. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
 2. prepare a written proposed decision which will contain:
 - a. findings of fact;
 - b. a determination of the issues presented;
 - c. a citation of applicable policy and regulations;
- and
- d. an order.

F. The written proposed decision is provided to the secretary of the department. The secretary may:

1. adopt the proposed decision;
2. reject it based upon the record; or
3. remand the proposed decision to the administrative law judge to take additional evidence.

a. If the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary.

G. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the direct service worker at his last known address and to any representative thereof.

H. If there is a final and binding administrative hearing decision to place a finding on the DSW Registry against the direct service worker, the department shall place the direct service worker's name and the adverse findings on the DSW Registry. The occurrence and findings will remain on the DSW Registry permanently.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006).

§9287. Preliminary Conferences

A. Although not specifically required, the Bureau of Appeals may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplification of issues;
2. resolution of controversial matters;
3. exchange of documents and information;

4. stipulations of fact to avoid unnecessary introduction of witnesses; and

5. other matters which may aid disposition of the issues.

B. When the Bureau of Appeals schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

1. The hearing shall be scheduled within 30 calendar days following the completion of the preliminary conference or at a time mutually convenient to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006).

§9289. Witnesses and Subpoenas

A. Each party shall arrange for the presence of their witnesses at the administrative hearing.

B. A subpoena to compel the attendance of a witness may be issued by the administrative law judge:

1. upon written request by a party and a showing of the need for such action; or
2. on his own motion.

C. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served;
2. precisely describe the material that is desired to be produced;
3. state the materiality thereof to the issue involved in the proceeding; and
4. include a statement that, to the best of the applicant's knowledge, the witness has such items in his possession or under his control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006).

§9291. Continuances or Further Hearings

A. The administrative law judge may continue a hearing to another time or place, or order a further hearing on his own motion or at the request of any party who shows good cause.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or
2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence:

a. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be given to each party present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006).

§9293. Failure to Appear at Administrative Hearings

A. If a direct service worker fails to appear at an administrative hearing, a decision may be issued by the Bureau of Appeals dismissing the hearing. A copy of the decision shall be mailed to each party.

B. Any dismissal may be rescinded upon order of the Bureau of Appeals if the direct service worker:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and
2. provides evidence of good cause for his/her failure to appear at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#080

RULE

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
(LAC 50:XXI.13901 and 13915)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities adopts LAC 50:XXI.13901 and 13915 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 11. New Opportunities Waiver Chapter 139. Covered Services §13901. Individualized and Family Support Services

A. - A.1.a. ...

2. Individual and Family Supports-Night (IFS-Nights) is direct support and assistance provided during the recipient's sleeping "night" hours. Night hours are

considered to be the period of time when the recipient is asleep and there is a reduced frequency and intensity of required assistance. IFS-Night services are not limited to traditional nighttime hours. The IFS-Night worker must be immediately available and in the same residence as the recipient to be able to respond to the recipient's immediate needs. Documentation of the level of support needed, based on the frequency and intensity of needs, shall be included in the CPOC with supporting documentation in the provider's services plan. Supporting documentation shall outline the recipient's safety, communication, and response methodology planned for and agreed to by the recipient and/or their authorized representative identified in their circle of support. The IFS-Night worker is expected to remain awake and alert unless otherwise authorized under the procedures noted below.

a. Recipients who are able during sleeping hours to notify direct support workers of their need for assistance may choose the option of IFS-Night services where staff is not required to remain awake.

b. The recipient's support team shall assess the recipient's ability to awaken staff. If it is determined that the recipient is able to awaken staff and requests that the IFS-Night worker be allowed to sleep, the CPOC shall reflect the recipient's request.

c. Support teams should consider the use of technological devices that would enable the recipient to notify/awaken IFS-Night staff. (Examples of devices include wireless pagers, alerting devices such as a buzzer, a bell or a monitoring system.) If the method of awakening the IFS-Night worker utilizes technological device(s), the service provider will document competency in use of devices by both the recipient and IFS-Night staff prior to implementation. The support coordinator will require a demonstration of effectiveness of this service no less than quarterly.

d. A review shall include review of log notes indicating instances when IFS-Night staff was awakened to attend to the recipient. Also included in the review is acknowledgement by the recipient that IFS-Night staff responded to their need for assistance timely and appropriately. Instances when staff did not respond appropriately will immediately be brought to the support team for discontinuation of allowance of the staff to sleep. The service will continue to be provided by awake and alert staff.

e. Any allegation of abuse/neglect during sleeping hours will result in the discontinuation of allowance of the staff to sleep until investigation is complete. Valid findings of abuse/neglect during night hours will require immediate revision to the CPOC.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1202 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:2063 (November 2006).

§13915. Transportation for Day Habilitation and Supported Employment Models

A. Transportation provided for the recipient to the site of the day habilitation or supported employment model, or between the day habilitation and supported employment model site (if the recipient receives services in more than one place) is reimbursable when day habilitation or supported employment model has been provided. Reimbursement may be made for a one-way trip if reason is documented in provider's transportation log. There is a maximum fee per day that can be charged for transportation regardless of the number of trips per day.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:2064 (November 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#081

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Mental Health Rehabilitation Program (LAC 50:XV.Chapters 1-7)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.Chapters 1-7 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 1. General Provisions

§101. Introduction

A. - C. ...

D. Mental Health Rehabilitation services shall be covered and reimbursed for any eligible Medicaid recipient who meets the medical necessity criteria for services. The department will not reimburse claims determined through the prior authorization or monitoring process to be a duplicated service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1082 (May 2005), amended LR 32:2064 (November 2006).

§103. Definitions and Acronyms

BHSF—Bureau of Health Services Financing

CPRP—Certified Psychosocial Rehabilitation Practitioner as designated by the Commission for Psychiatric Rehabilitation Certification through the United States Psychiatric Rehabilitation Services Association (USPRA).

ISRP—Individualized Service and Recovery Plan.

Off-Site Service Delivery Location—locations of service that are publicly available for, and commonly used by, members of the community other than the MHR provider and sites or locations that are directly related to the recipient's usual environment, or those sites or locations that are utilized in a non-routine manner. This can also include a location used solely for the provision of allowable off-site service delivery by a certified MHR provider.

Provider Contract—an agreement between DHH and a provider of MHR services.

QMP—Quality Management Program.

Recoupment—the authority of BHSF to recover payments made for services that are subsequently determined, for any reason, not to qualify for reimbursement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1082 (May 2005), amended LR 32:2065 (November 2006).

§105. Prior Authorization

A. Every mental health rehabilitation service shall be prior authorized by the bureau or its designee. Services provided without prior authorization will not be considered for reimbursement. There shall be no exceptions to the prior authorization requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:2065 (November 2006).

Chapter 3. Covered Services and Staffing Requirements

Subchapter A. Service Delivery

§301. Introduction

A. ...

B. Service Package. Each MHR provider shall have a policy wherein they agree to identify and either provide or contract services as identified in every Individualized Service and Recovery Plan (ISRP). The provider shall be qualified to provide services, and the recipient shall be eligible to receive the services. The services for each individual shall be included in the ISRP.

C. Children's Services. There shall be family and/or legal guardian involvement throughout the planning and delivery of MHR services for children and adolescents. The agency or individual who has the decision making authority for children and adolescents in state custody must request and approve the provision of MHR services to the recipient. The

case manager or person legally authorized to consent to medical care must be involved throughout the planning and delivery of all MHR services and such involvement must be documented in the recipient's record maintained by the MHR agency.

1. The child or adolescent shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

- a. age;
- b. development;
- c. education; and
- d. culture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:2065 (November 2006).

Subchapter B. Mandatory Services

§311. Assessment

A. An assessment is an integrated series of diagnostic and evaluation procedures conducted with the recipient and his/her significant other(s) to provide the basis for the development of an effective, comprehensive and individualized service and recovery plan. It is an intensive clinical, psychosocial evaluation of a recipient's mental health conditions which results in an ISRP for the recipient. It may also be used to determine the recipient's level of care and medical necessity. An initial assessment shall be completed when an individual is determined to potentially qualify for the MHR Program and a reassessment shall be completed at the end of each prior authorization period or as deemed necessary by the bureau.

B. Initial assessments and reassessments shall include developing the recipient's ISRP, reviewing progress toward the goals of the ISRP and modifying the ISRP as indicated. The ISRP is an individualized, structured, goal-oriented schedule of services developed in conjunction with and agreed upon by the adult recipient or the child recipient and his/her family and the treatment team. Recipients must be actively involved in the process and have a major role in determining the direction of their ISRP. The ISRP must identify the goals, objectives, interventions, and services which are based on the results of the assessment/reassessment.

C. Staffing Requirements

1. Initial assessments and reassessments must be completed by practitioners operating within the scope of their licenses as required by the respective Louisiana Practice Acts.

2. A licensed mental health professional (LMHP) shall:

- a. have a face-to-face contact with the recipient for the purpose of completing the assessment;
- b. score the LOCUS/CALOCUS if he/she has been approved to be a clinical evaluator by the Office of Mental Health (OMH); and
- c. sign and date the assessment/reassessment and the ISRP.

3. A psychiatrist shall:

- a. have a face-to-face interview with the recipient at initial assessment;

b. review and sign the Medical History Questionnaire section of the initial assessment;

c. review and sign the ISRP at initial assessment/reassessment; and

d. review and sign the Electronic Case Data Inquiry (eCDI) screen print, if data is available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:2065 (November 2006).

§313. Service Planning

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), repealed LR 32:2066 (November 2006).

§317. Community Support

A. Community support services is the provision of mental health rehabilitation services and supports necessary to assist the recipient in achieving and maintaining rehabilitative, resiliency and recovery goals. The service is designed to meet the educational, vocational, residential, mental health treatment, financial, social and other treatment support needs of the recipient. Community support is the foundation of the recovery-oriented ISRP and is essential to all MHR recipients. Its goal is to increase and maintain competence in normal life activities and to gain the skills necessary to allow recipients to remain in or return to naturally occurring supports. This service includes the following specific goals:

1. achieving the restoration, reinforcement, and enhancement of skills and/or knowledge necessary for the recipient to achieve maximum reduction of his/her psychiatric symptoms;

2. minimizing the effect of mental illness;

3. maximizing the recipient's strengths with regard to the mental illness;

4. increasing the level of the recipient's age-appropriate behavior;

5. increasing the recipient's independent functioning to an appropriate level;

6. enhancing social skills;

7. increasing adaptive behaviors in family, peer relations, school and community settings;

8. maximizing linkage and engagement with other community services, including natural supports and resources;

9. applying decision-making methods in a variety of skill building applications; and

10. training caregivers to address the needs identified in the ISRP using preventive, developmental and therapeutic interventions designed for direct individual activities.

B. - B.3. ...

C. Service Exclusions. Community support is an individualized service and is not billable if delivered in a group setting or with more than one recipient per staff per contact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:2066 (November 2006).

§319. Group Counseling

A. Group counseling is a treatment modality using face-to-face verbal interaction between two to eight recipients. It is a professional therapeutic intervention utilizing psychotherapy theory and techniques. The service is directed to the goals on the approved ISRP.

B. - B.2. ...

C. Clinical Exclusion. The MHR provider shall not admit any recipient into this service whose presence would pose a documented health and safety risk to the recipient or to other recipients and for whom the provider cannot provide the necessary care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:2066 (November 2006).

§321. Individual Intervention

A. Individual intervention is a verbal interaction between the counselor therapist and the recipient receiving services that is brief, face-to-face, and structured. Individual intervention is a service provided to eliminate the psychosocial barriers that impede the skills necessary to function in the community. It includes services provided to eliminate psychosocial barriers that impede the skills necessary to function in the community.

1. Individual intervention is a range of professionally delivered therapeutic strategies provided individually and face-to-face to the recipient for the purpose of rehabilitating and restoring him/her to an optimal level of functioning and to reduce the risk of a more restrictive treatment intervention. It includes services provided to eliminate psychosocial barriers that impede the development/enhancement of skills necessary to function in the community.

2. Repealed.

B. Staffing Requirements. Individual intervention must be provided by a:

1. LMHP; or

2. MHP under the supervision of a LMHP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:2066 (November 2006).

§323. Parent/Family Intervention (Counseling)

A. - B.2. ...

C. - D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:2066 (November 2006).

§325. Psychosocial Skills Training—Group (Youth)

A. Psychosocial Skills Training—Group (Youth) is a therapeutic, rehabilitative, skill building service for children and adolescents to increase and maintain competence in

normal life activities and gain the skills necessary to allow them to remain in or return to their community. It is an organized service based on models incorporating psychosocial interventions.

B. - B.2. ...

C. Clinical Exclusion. The MHR provider shall not admit any recipient into this service whose presence would pose a documented health and safety risk to the recipient or to other recipients and for whom the provider cannot provide the necessary care.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:2066 (November 2006).

Subchapter C. Optional Services

§335. Parent/Family Intervention (Intensive)

A. Parent/Family Intervention (Intensive) is a structured service involving the recipient and one or more of his/her family members. It is an intensive family preservation intervention intended to stabilize the living arrangement, promote reunification, or prevent utilization of out of home therapeutic placement (i.e., psychiatric hospitalization, therapeutic foster care) for the recipient. These services focus on the family and are delivered to children and adolescents primarily in their homes. Therefore, Parent/Family Intervention (Intensive) is not appropriate for recipients whose families refuse to participate or to allow services in the home.

1. This service is comprehensive and inclusive of all other rehabilitative services, with the exception of assessment/reassessment and medication management which may be provided and billed for a recipient receiving Parent/Family Intervention (Intensive) services.

B. - B.3. ...

C. - D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:2067 (November 2006).

§337. Psychosocial Skills Training—Group (Adult)

A. Psychosocial Skills Training—Group (Adult) is a therapeutic, rehabilitative, skill building service for individuals to increase and maintain competence in normal life activities and gain the skills necessary to allow them to remain in or return to their community. It is designed to increase the recipient's independent functioning in his/her living environment through the integration of recovery and rehabilitation principles into the daily activities of the recipient. It is an organized program based on a psychosocial rehabilitation philosophy to assist persons with significant psychiatric disabilities, to increase their functioning to live successfully in the natural environments of their choice.

B. Staffing Requirements

1. All staff providing direct services shall have documented orientation to the psychosocial rehabilitation model being used in the program. This service shall be furnished under the supervision of a LMHP who is on site a minimum of 50 percent of the service operating hours. The

supervising LMHP shall be a Certified Psychosocial Rehabilitation Practitioner (CPRP) as designated by the Commission for Psychiatric Rehabilitation Certification through the USPRA or eligible for certification with a written plan for achieving CPRP certification within 12 months of certification as a Psychosocial Skills Group (Adult) provider or within 12 months of being hired.

2. Psychosocial skills training (group) shall be provided by a:

- a. LMHP;
- b. MHP; or
- c. MHS.

3. There must be a minimum staffing ratio of one direct service staff person for eight recipients at all times of active program participation.

4. Group size may not exceed 15 recipients for any single skill training activity.

C. Clinical Exclusion. The MHR provider shall not admit any recipient into psychosocial skills training-group (adult) whose presence would pose a documented health and safety risk to the recipient or to other recipients and for whom the provider cannot provide the necessary care.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:2067 (November 2006).

Chapter 5. Medical Necessity Criteria

§501. General Provisions

A. When a recipient requests MHR services, an initial screening must be completed to determine whether the recipient potentially meets the medical necessity criteria for MHR services. If it is determined that the recipient potentially meets the criteria for services, an initial assessment shall be completed and fully documented in the recipient's record no later than 30 days after the request for services. Information in an initial assessment shall be based on current circumstances (within 30 days) and face-to-face interviews with the recipient, taking pertinent historical data into consideration. If the recipient is a minor, the information shall be obtained from a parent, legal guardian or other person legally authorized to consent to medical care. Reassessments shall be based on current circumstances (within 30 days) and face-to-face interview with the recipient. If the recipient is a minor, the information shall be obtained from a parent, legal guardian or other person legally authorized to consent to medical care.

B. If it is determined at the initial screening or assessment that a recipient does not meet the medical necessity criteria for services, the provider shall refer the recipient to his/her primary care physician, the nearest community mental health clinic, or other appropriate services with copies of all available medical and social information.

C. In order to qualify for MHR services, a recipient must meet the medical necessity criteria for services outlined in §503 or §505. These medical necessity criteria shall be utilized for authorization and reauthorization requests received on or after August 1, 2005.

D. Initially all recipients must meet the medical necessity criteria for diagnosis, disability, duration and level of care.

MHR providers shall rate recipients on the CALOCUS/LOCUS at 90 day intervals, and these scores and supporting documentation must be submitted to the bureau or its designee upon request. Ongoing services must be requested every 90 days based on progress towards goals, individual needs, and level of care requirements which are consistent with the medical necessity criteria.

E. The bureau or its designee reserves the right to require a second opinion evaluation by a licensed mental health professional that is not associated with the MHR provider that is seeking authorization or reauthorization of services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2067 (November 2006).

§503. Adult Criteria for Services

A. In order to qualify for MHR services, Medicaid recipients age 18 or older must meet all the following criteria.

1. Diagnosis. The recipient must currently have or, at any time during the past year, had a diagnosable mental behavioral or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) or the *International Classification of Diseases*, Ninth Revision, Clinical Modification (ICD-9-CM) or subsequent revisions of these documents. The diagnostic criteria specified under DSM-IV-TR "V" codes for substance use disorders and developmental disorders are excluded unless these disorders co-occur with another diagnosable serious mental illness.

2. Disability. In order to meet the criteria for disability, the recipient must exhibit emotional, cognitive or behavioral functioning which is so impaired, as a result of mental illness, as to substantially interfere with role, occupational and social functioning as indicated by a score within levels four or five on the LOCUS that can be verified by the bureau or its designee.

3. Duration. The recipient must have a documented history of severe psychiatric disability which is expected to persist for at least a year and requires intensive mental health services, as indicated by one of the following:

- a. psychiatric hospitalizations of at least six months duration in the last five years (cumulative total); or
- b. two or more hospitalizations for mental disorders in the last 12-month period; or
- c. structured residential care, other than hospitalization, for a duration of at least six months in the last five years; or
- d. documentation indicating a previous history of severe psychiatric disability of at least six months duration in the past year.

NOTE: Recipients who are age 18 and up to 21 and who have been determined not to meet the adult medical necessity criteria for MHR services, initial or continued care, shall be reassessed by the bureau or its designee using the children/adolescent medical necessity criteria for services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2068 (November 2006).

§505. Child/Adolescent Criteria for Services

A. In order to qualify for MHR services, Medicaid recipients age 17 or younger must meet all the following criteria.

1. Diagnosis. The recipient must currently have or, at any time during the past year, had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) or the *International Classification of Diseases*, Ninth Revision, Clinical Modification (ICD-9-CM), or subsequent revisions of these documents. The diagnostic criteria specified under DSM-IV-TR "V" codes for substance use disorders and developmental disorders are excluded unless these disorders co-occur with another diagnosable serious mental illness.

2. Disability. In order to meet the criteria for disability, the recipient must exhibit emotional, cognitive or behavioral functioning which is so impaired, as a result of mental illness, as to substantially interfere with role, educational, and social functioning as indicated by a score within levels four or five on the CALOCUS that can be verified by the bureau or its designee.

NOTE: Youth returning to community living from structured residential settings or group homes under the authority of the Office of Community Services or the Office of Youth Services may be considered to meet the disability criteria for admission with a level three on the LOCUS or CALOCUS.

3. Duration. The recipient must have a documented history of severe psychiatric disability that is expected to persist for at least six months and requires intensive mental health services, as indicated by at least one of the following:

- a. past psychiatric hospitalization(s);
- b. past supported residential care for emotional/behavioral disorder;
- c. past structured day program treatment for emotional/behavioral disorder; or
- d. documentation indicating that an impairment or pattern of inappropriate behaviors has persisted for at least three months and is expected to persist for at least six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2068 (November 2006).

§507. Exclusionary Criteria

A. Mental health rehabilitation services are not considered to be appropriate for recipients whose diagnosis is mental retardation, developmental disability or substance abuse unless they have a co-occurring diagnosis of severe mental illness or emotional/behavioral disorder as specified within DSM-IV-TR or ICD-9-CM, or its subsequent revisions of these documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2068 (November 2006).

§509. Discharge Criteria

A. Discharge planning must be initiated and documented for all recipients at time of admission to MHR services. The written discharge plan must include a plan for the

arrangement of services required to transition the recipient to a lower level of care within the community. Discharge from mental health rehabilitation services for current and new recipients shall be initiated if at least one of the following situations occurs:

1. the recipient's treatment plan/ISRP goals and objectives have been substantially met;
2. the recipient meets criteria for higher level of treatment, care, or services;
3. the recipient, family, guardian, and/or custodian are not engaging in treatment or not following program rules and regulations, despite attempts to address barriers to treatment;
4. consent for treatment has been withdrawn; or
5. supportive systems that allow the recipient to be maintained in a less restrictive treatment environment have been arranged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2068 (November 2006).

Chapter 7. Provider Participation Requirements

Subchapter A. Certification and Enrollment

§701. Provider Enrollment Moratorium

A. A moratorium is implemented on the enrollment of mental health rehabilitation (MHR) providers to participate in the Medicaid Program. The department shall not approve enrollment for any new MHR provider office regardless of the status of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:668 (March 2005), amended LR 32:2069 (November 2006).

§703. Application

A. To be certified or recertified as an enrolled mental health rehabilitation provider requires that the provisions of this Subpart 1, the provider manual and the appropriate statutes are met. A prospective provider who elects to enroll with the department to provide MHR services shall apply to the Bureau of Health Services Financing or its designee for certification. The prospective provider shall create and maintain documents to substantiate that the provider meets all prerequisites in order to enroll as a Medicaid provider of MHR services.

B. A prospective MHR provider shall submit the following documents for certification:

1. a completed Form PE 50 and addendum;
2. a completed disclosure of ownership form;
3. direct deposit authorization form;
4. nonrefundable application fee of \$500 paid by certified check to the State of Louisiana, Department of Health and Hospitals;
5. proof of a request for accreditation and a copy of the completed application with a national accrediting body approved by the bureau and proof of payment to the accrediting body. Proof of full accreditation is required within nine months of issuance of a Medicaid provider enrollment number;
6. an affidavit that identifies the applicant's licensed mental health professional and psychiatrist, including

verification of current licensure. The LMHP identified must be an employee of the prospective MHR provider;

7. proof of the establishment and maintenance of a line of credit from a federally insured, licensed lending institution in an amount equal to three months of current operating expenses as proof of adequate finances. It is the MHR provider's responsibility to notify the bureau in the event that the financial institution cancels or reduces the upper credit limit:

a. nonprofit agencies that have operated for five years or more and have an unqualified audit report for the most recent fiscal year prepared by a licensed certified public accountant, which reflects financial soundness of the nonprofit provider, are not required to meet this standard;

b. governmental entities or organizations are exempt from this requirement;

8. a statement identifying the population to be served:

NOTE: A change in the population group to be served cannot be made without prior written approval by the bureau.

a. adults with serious mental illness; or

b. children with an emotional/behavior disorder;

9. proof of the establishment and maintenance of a general liability and a professional liability insurance policy with at least \$1,000,000 coverage under each policy. The certificates of insurance for these policies shall be in the name of the MHR provider and certificate holder shall be the Department of Health and Hospitals. The provider shall notify the bureau when coverage is terminated for any reason. Coverage shall be maintained continuously throughout the time services are provided and thereafter for a period of one year:

a. governmental entities or organizations are exempt from this requirement;

10. identification of all the MHR provider's office locations and off-site service delivery locations;

11. proof that all owner and staff have attended mandatory training as required by the bureau;

12. proof that all equipment and technology requirements have been met as established by the bureau;

13. corporations must provide current proof of business registration with the Secretary of State;

14. proof of clinical competence as defined and required by the bureau;

15. a notarized report of any and all settled convictions and/or pending charges of malpractice and felonies for the business itself (in this or any other name), the owners, principals, partners and/or governing bodies, Board of Directors and the executive/managing director;

16. proof of current inspection and approval by the Office of State Fire Marshal;

17. proof of current inspection and approval by the Office of Public Health;

18. a comprehensive administrative policy and procedure manual that describes an administrative structure to provide MHR services including:

a. the names, addresses, composition, duties and responsibilities of the governing body;

b. policy governing creation and retention of administrative and personnel records;

c. a policy to utilize the current MHR SIS (or its successor) system that includes accurate MHR provider staff and client information;

d. written procedures for maintaining the security and the confidentiality of recipient records;

e. written emergency preparedness plan reviewed and approved by the bureau;

f. initial and annual recipient orientation policy. The MHR provider shall adopt a procedure that requires each recipient to sign an acknowledgment form that verifies that the recipient was fully and completely informed of his/her rights, orally and in writing and received a copy of the signed form. The policy shall include:

- i. a mission statement;
- ii. recipients' rights, including freedom of choice to select their MHR provider and right to confidentiality;
- iii. the array and types of treatment services offered by the MHR provider;
- iv. staff qualifications;
- v. a statement of after hours access to services;
- vi. crisis management procedures;
- vii. complaint resolution procedures; and
- viii. discharge planning procedures;

19. comprehensive training policy for all owners, employees, volunteers and students; and

20. an operations policy manual that includes a mission statement, program philosophy and goals for the MHR provider.

C. The MHR provider shall have a separate Medicaid provider number for each location where it routinely conducts business and provides scheduled services. This does not include those sites or locations that meet the definition of an off-site service delivery location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1086 (May 2005), amended LR 32:2069 (November 2006).

§705. Application and Site Reviews

A. A prospective MHR provider shall undergo one or more reviews by the department or its designee before certification to ensure compliance with provider enrollment and operational requirements:

1. an application review;
2. a first site review; and if necessary
3. a second site review.

B. The bureau or its designee may conduct a review of all application documents for compliance with MHR requirements. If the documentation is approved, the applicant will be notified and an appointment may be scheduled for a first site review of the prospective MHR provider's physical location. If the first site review is successful, the certification request may be approved and forwarded to provider enrollment for further processing.

C. If the application documentation furnished by the prospective MHR provider is not acceptable, the provider will be notified of the deficiencies. The applicant has 30 days to correct the documentation deficiencies and to request a site visit at their physical location.

1. If the prospective MHR provider requests a site visit in a timely manner, a site review of their physical location may be scheduled. At the onsite review, the bureau or its designee may review the corrected documents and make an assessment of the physical location. If the prospective provider has corrected the application document

deficiencies and the physical location is deemed acceptable and sufficient to operate as a mental health rehabilitation provider, the bureau or its designee may approve the certification request and forward the necessary paperwork to Provider Enrollment for further processing.

2. If the prospective provider does not request a site visit within 30 days, the application may be rejected and the provider may not reapply for certification for one year from the date of the initial application review.

D. A second site review is necessary when a provider fails the first site review. The prospective provider will have 30 days from failure of the first site review to correct any deficiencies and to request the second site review.

1. If the prospective provider requests the second site review in a timely manner and the site review verifies that the applicant has corrected the deficiencies and the location is deemed acceptable and sufficient to operate as a mental health rehabilitation provider, the certification request may be approved and sent to provider enrollment for further processing.

2. If the prospective provider has not corrected all deficiencies, they may be denied certification and may not reapply for certification for one year from the date of the application review.

3. If the prospective provider does not request and schedule a second site review within 30 days, the application may be rejected and the provider may not reapply for certification for one year from the date of the application review.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:802 (April 2004), amended LR 31:1087 (May 2005), LR 32:2070 (November 2006).

§707. Failure to Achieve Certification/Recertification

A. If the prospective MHR provider fails to meet any application or certification requirements, they may not be enrolled as an MHR provider.

B. There may be an immediate loss of certification if at any time, the enrolled MHR provider fails to obtain or maintain certification requirements, recertification requirements or accreditation status. The provider may not reapply for certification for one year following the date of loss of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1087 (May 2005), amended LR 32:2070 (November 2006).

§709. Certification and Recertification

A. Certification. The MHR provider may be enrolled when the bureau or its designee certifies compliance with all provider enrollment and operational requirements.

1. New providers must present proof of full accreditation by a bureau-approved national accrediting body within nine months following initial certification. Failure to comply may result in termination of the provider's certification.

B. Recertification. Certified providers shall apply for recertification annually. The application must be submitted

90 days prior to the expiration of the MHR provider's certification.

1. The bureau or its designee may conduct a recertification review to ensure continued compliance with all MHR regulations and policies.

C. Failure to Recertify. If a provider fails to meet all requirements for recertification, he/she will receive a written notice identifying the deficiencies. The MHR provider must correct these deficiencies within 60 days from the date of the notice of the deficiencies. If the deficiencies are not corrected within this 60-day period, the provider's certification may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1087 (May 2005), amended LR 32:2070 (November 2006).

§711. Certification and Recertification

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1087 (May 2005), repealed LR 32:2071 (November 2006).

Subchapter B. Accreditation

§719. Accreditation

A. Currently enrolled and prospective providers of mental health rehabilitation service shall be accredited by a national accreditation organization for any services for which Medicaid reimbursement will be requested. The department shall only accept accreditation from the following national organizations for the purposes of enrolling a provider into the Mental Health Rehabilitation (MHR) Program:

1. the Council on Accreditation (COA);
2. the Commission on Accreditation of Rehabilitation Facilities (CARF); or
3. the Joint commission on Accreditation of Healthcare Organizations (JCAHO).

B. All enrolled providers of mental health rehabilitation services shall maintain accreditation status. Denial or loss of accreditation status, or any negative change in accreditation status, shall be reported to the department in writing within five working days of receiving the notice from the national accreditation organization. The written notification shall include information detailing a copy of the accreditation report and any related correspondence from the accrediting body including, but not limited to:

1. the provider's denial or loss of accreditation status;
2. any negative change in accreditation status;
3. the steps and timeframes, if applicable, the accreditation organization is requiring from the provider to maintain accreditation.

C. If at any time, a MHR provider loses accreditation, an automatic loss of certification may occur.

D. Failure to notify the department of denial or loss of accreditation status, or any negative change in accreditation status may result in sanctions to the mental health rehabilitation agency.

E. - F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1088 (May 2005), amended LR 32:2071 (November 2006).

Subchapter C. Provider Responsibilities

§731. General Provisions

A. - A.1. ...

B. The MHR provider shall immediately report any suspected or known violations of any state or federal criminal law to the bureau.

C. Each MHR provider shall maintain written procedures and implement all required policies and procedures immediately upon acceptance of recipients for services.

1. - 3. Repealed.

D. The MHR provider shall develop a policy and procedure for hospitalization that is in conformity with the single point of entry (SPOE) policy and procedure.

E. The MHR provider shall request an expedited prior authorization review for any recipient whose discharge from a 24-hour care facility is dependent on follow-up mental health services.

F. The MHR provider shall develop a quality management plan (QMP) as outlined in the current MHR provider manual. It should address all aspects of the MHR provider operation.

G. If, as a result of a monitoring review, a written notice of deficiencies is given to the MHR provider, the provider may be required to submit a written corrective action plan to the bureau within 10 days of receipt of the notice from the department. If the MHR provider fails to submit a corrective action plan within 10 days from the receipt of the notice, sanctions may be imposed against the MHR provider.

H. The MHR provider must establish regular business office hours for all enrolled office locations. Business office locations must be fully operational at least eight hours a day, five days a week between the hours of 7 a.m. and 7 p.m. This requirement does not apply to off-site service delivery locations.

1. Each office shall contain office equipment and furnishings requisite to providing MHR services including, but not limited to:

- a. computers;
- b. facsimile machines;
- c. telephones; and
- d. lockable file cabinets.

2. Offices shall be located in areas separate and apart from areas of residential occupancy and be clearly identifiable as a separate office. The environment must be appropriate to the care and treatment of the recipient and ensure confidentiality and personal safety.

3. An office location is fully operational when the provider:

- a. has met all the requirements for and becomes certified to offer mental health rehabilitation services;
- b. has at least five active recipients at the time of any monitoring review, other than the initial application review;
- c. is capable of accepting referrals at any time during regular business hours;
- d. retains adequate staff to assess, process and manage the needs of current recipients;
- e. has the required designated staff on site (at each location) during business hours; and

f. is immediately available to its recipients and BHSF by telecommunications 24 hours per day.

4. MHR services may be delivered in off site service delivery locations that are:

a. publicly available for and commonly used by members of the community other than the provider (e.g., libraries, community centers, YMCA, church meeting rooms, etc.);

b. directly related to the recipient's usual environment (e.g., home, place of work, school); or

c. utilized in a non-routine manner (e.g., hospital emergency rooms or any other location in which a crisis intervention service is provided during the course of the crisis).

NOTE: Services may not be provided in the home(s) of the MHR provider's owner, employees or agents. Group counseling and psychosocial skills training (adult and youth) services may not be provided in a recipient's home or place of residence.

Services may not be provided in the professional practitioner's private office.

5. Every location where services are provided shall be established with the intent to promote growth and development, client confidentiality and safety.

6. The MHR provider accepts full responsibility to ensure that its office locations meet all applicable federal, state and local licensing requirements. The transferring of licenses and certifications to new locations is strictly prohibited. It is also the responsibility of the MHR provider to immediately notify the bureau of any office relocation or change of address and to obtain a new certification and license (if applicable).

I. As part of the reassessment process, when it is determined that MHR discharge criteria has been met, the MHR provider shall refer the recipient to his/her primary care physician or to the appropriate medically necessary services, and document the referral.

J. Emergency Preparedness Plan

1. The provider shall develop and implement an emergency preparedness plan for fire, natural or declared disasters. The plan shall include:

a. what measures will be taken to ensure the safety and security of employees and recipients;

b. provisions to protect business records, including employee and recipient records;

c. a means of communication with the bureau to report the status of the provider agency post-disaster.

2. If the provider must close its offices as a result of the disaster, the provider may not resume provision of reimbursable services until authorized to do so by the bureau.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1088 (May 2005), amended LR 32:2071 (November 2006).

§735. Orientation and Training

A. Orientation and training shall be provided to all employees, volunteers, interns and student workers. This orientation should be comprised of no less than five face-to-face hours and may be considered as part of the overall requirement of 16 hours orientation.

1 - 5. ...

B. Exception. The following medical staff may substitute review of a bureau-approved training packet in lieu of the required 16 hours of orientation:

1. the psychiatrist;

2. an advanced practice registered nurse;

3. registered nurse; and

4. licensed practical nurse.

NOTE: The RN and LPN are only allowed to make the substitution for the 16 hours of orientation if medication management is the only service they will provide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1089(May 2005), amended LR 32:2072 (November 2006).

§737. Staffing Qualifications

A. MHR services shall be provided by individuals who meet the following education and experience requirements.

1. Licensed Mental Health Professional (LMHP). A LMHP is a person who has a graduate degree in a mental health-related field from an accredited institution and is licensed to practice in the state of Louisiana by the applicable professional board of examiners. All college degrees must be from a nationally accredited institution of higher education as defined in Section 102(b) of the Higher Education Act of 1965 as amended. In order to qualify as a mental health-related field, an academic program must have curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines. The following professionals are considered to be LMHPs.

a. Psychiatrist. Each MHR provider shall implement and maintain a contract with a psychiatrist(s) to provide consultation and/or services on site as medically necessary. The psychiatrist must be a licensed medical doctor (M.D. or D.O.) who is board-certified or board-eligible, authorized to practice psychiatry in Louisiana, and enrolled to participate in the Louisiana Medicaid Program. A board eligible psychiatrist may provide psychiatric services to MHR recipients if he/she meets all of the following requirements.

i. The physician must hold an unrestricted license to practice medicine in Louisiana and unrestricted DEA and state and federal controlled substance licenses. If licenses are held in more than one state or jurisdiction, all licenses held by the physician must be documented in the employment record and also be unrestricted.

ii. The physician must have satisfactorily completed a specialized psychiatric residency training program accredited by the Accreditation Council for Graduate Medical Education (ACGME), as evidenced by a copy of the certificate of training or a letter of verification of training from the training director which includes the exact dates of training and verification that all ACGME requirements have been satisfactorily met. If training was completed in child and adolescent psychiatry, the training director of the child and adolescent psychiatry program must document the child and adolescent psychiatry training.

NOTE: All documents must be maintained and readily retrieved for review by the Bureau or its designee.

b. Psychologist—an individual who is licensed as a practicing psychologist under the provisions of R.S. 37:2351-2367;

c. Registered Nurse—a nurse who is licensed as a registered nurse or an advanced practice registered nurse in the state of Louisiana by the Board of Nursing. An advanced practice registered nurse, who is a clinical nurse specialist in psychiatry, must operate under an OMH approved collaborative practice agreement with an OMH approved board-certified psychiatrist. A registered nurse must:

i. be a graduate of an accredited program in psychiatric nursing and have two years of post-master's supervised experience in the delivery of mental health services; or

ii. have a master's degree in nursing or a master's degree in a mental health-related field and two years of supervised post master's experience in the delivery of mental health services; and

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

iii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to MHR recipients.

NOTE: Every registered nurse providing MHR services shall have documented evidence of five CEUs annually that are specifically related to behavioral health and medication management issues.

d. Social Worker—an individual who has a master's degree in social work from an accredited school of social work and is a licensed clinical social worker under the provisions of R.S. 37:2701-2723.

e. Licensed Professional Counselor—an individual who has a master's degree in a mental health related field, is licensed under the provisions of R.S. 37:1101-1115 and has two years post-masters experience in mental health.

2. Mental Health Professional (MHP). The MHP is an individual who has a master's degree in a mental health-related field, with a minimum of 15 hours of graduate-level course work and/or practicum in applied intervention strategies/methods designed to address behavioral, emotional and mental disorders as a part of, or in addition to, the master's degree.

NOTE: The MHP must be an employee of the MHR provider and work under the supervision of a LMHP.

3. Mental Health Specialist (MHS). The MHS is an individual who meets one or more of the following criteria:

a. a bachelor's degree in a mental health related field; or

b. a bachelor's degree, enrolled in college and pursuing a graduate degree in a mental health-related field, and have completed at least two courses in that identified field; or

c. a high school diploma or a GED, and at least four years experience providing direct services in a mental health, physical health, social services, education or corrections setting.

NOTE: The MHS must be an employee of the MHR provider and work under the supervision of a LMHP.

4. Nurse. A registered nurse who is licensed by the Louisiana Board of Nursing or a licensed practical nurse who is licensed by the Louisiana Board of Practical Nurse Examiners may provide designated components of medication management services if he/she meets the following requirements.

a. A registered nurse must have:

i. a bachelor's degree in nursing and one year of supervised experience as a psychiatric nurse which must have occurred no more than five years from the date of employment or contract with the MHR provider; or

ii. an associate degree in nursing and two years of supervised experience as a psychiatric nurse which must have occurred no more than five years from the date of employment or contract with the MHR provider; and

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

iii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to MHR recipients.

b. A licensed practical nurse may perform medication administration if he/she has:

i. one year of experience as a psychiatric nurse which must have occurred no more than five years from the date of employment/contract with the MHR provider; and

ii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to any recipient.

NOTE: Every registered nurse and licensed practical nurse providing MHR services shall have documented evidence of five CEUs annually that are specifically related to behavioral health and medication management issues.

c. Repealed.

5. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1089 (May 2005), amended LR 32:2072 (November 2006).

Subchapter D. Records

§755. Recipient Records

A. ...

B. This record, at a minimum, shall contain:

1. the target population eligibility;

2. the initial recipient assessment;

3. the proposed ISRP;

4. documentation of prior authorization for each service;

5. the discharge plan; and

6. clinical documentation sufficient to substantiate any and all claim(s) for reimbursement.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1090 (May 2005), amended LR 32:2073 (November 2006).

§757. Personnel Records

A. A complete personnel records creation and retention policy shall be developed, implemented and maintained by the MHR provider. The MHR provider shall maintain documentation and verification of all relevant information necessary to assess qualifications for all staff, volunteers and consultants. All required licenses as well as professional, educational and work experience must be verified and

documented in the employee's or agent's personnel record prior to the individual providing billable Medicaid services. The MHR provider's personnel records shall include the following documentation.

1. **Employment Verification.** Verification of previous employment shall be obtained and maintained in accordance with the criteria specified in the MHR Provider Manual.

2. **Educational Verification.** Educational documents, including diplomas, degrees and certified transcripts shall be maintained in the records. Résumés and documentation of qualifications for the psychiatrist and LMHPs, including verification of current licensure and malpractice insurance, must also be maintained in the records.

3. **Criminal Background Checks.** There shall be documentation verifying that a criminal background check through the Louisiana Department of Public Safety (State Police) was conducted on all employees prior to employment. If the MHR provider offers services to children and adolescents, it shall have background checks performed as required by R.S. 15:587.1 and R.S. 15:587.3. The MHR provider shall not hire an individual with a record as a sex offender or permit these individuals to work for the provider.

4. **Drug Testing.** All prospective employees who apply to work shall be subject to a drug test for illegal drug use. The drug test shall be administered after the date of the employment interview and before an offer of employment is made. If a prospective employee tests positive for illegal drug use, the MHR provider shall not hire the individual. The MHR provider shall have a drug testing policy that provides for the random drug testing of employees and a written plan to handle employees who test positive for illegal drug use, whether the usage occurs at work or during off duty hours. This documentation shall be readily retrievable upon request by the bureau or its designee.

5. **Tuberculosis Test.** All persons, prior to or at the time of employment, shall be free of tuberculosis (TB) in a communicable state.

a. Any employee who has a negative Mantoux skin test for TB shall be retested annually in order to remain employed.

b. Any employee who has a positive Mantoux skin test must provide:

i. evidence of a normal chest X-ray;

ii. a statement from a physician certifying that the individual is noninfectious if the chest X-ray is other than normal; or

iii. completion of an adequate course of therapy, as prescribed by a licensed physician if active TB is diagnosed.

c. Any employee who has a positive Mantoux skin test must provide an annual physician's statement that they are free of TB in a communicable state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1090 (May 2005), amended LR 32:2073 (November 2006).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of

Health and Human Services, Centers for Medicare and Medicaid Services.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#082

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Nursing Facilities—Licensing
Nurse Aide Training and Competency Evaluation Program
(LAC 48:I.10001-10079)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 48:I.10001-10079 as authorized by R.S. 36:254 and P.L. 100-203. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 100. Nurse Aide Training and Competency Evaluation Program

Subchapter A. General Provisions

§10001. Definitions

Abuse—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
 - a. sexual abuse;
 - b. exploitation; or
 - c. extortion of funds or other things of value to such an extent that the resident's health, moral or emotional well-being is endangered; or
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

*Department—*the Louisiana Department of Health and Hospitals.

*Misappropriation—*taking possession without the permission of the resident who owns the personal belongings, or the deliberate misplacement, exploitation or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

*Neglect—*the failure to provide goods and services to the resident that are necessary to avoid physical harm, mental anguish or mental illness.

*Nursing Homes or Nursing Facilities—*any entity or facility serving two or more persons, who are not related to the operator by blood or marriage, that undertakes to provide maintenance, personal care or nursing for persons who are unable to properly care for themselves by reason of illness, age or physical infirmity.

Trainee—an individual who is enrolled in a nurse aide training and competency evaluation program, whether at a nursing facility or educational facility, with a goal of becoming a certified nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2074 (November 2006).

Subchapter B. Training and Competency Requirements

§10011. General Provisions

A. All nurse aide training and competency evaluation programs must be approved by the department.

B. Training and competency evaluation programs may be provided by:

1. community colleges;
2. vocational-technical programs; and
3. other educational entities.

C. Nursing facilities may provide the classroom and clinical training portion of the program but the competency evaluation must be administered by an entity approved by the department.

D. Each training and competency evaluation program must:

1. maintain qualified, approved personnel for classroom and clinical instruction;
2. protect the integrity of the competency evaluations by keeping them secure;
3. utilize a pass rate of a least 70 percent for each individual student; and
4. assure the curriculum meets federal and state requirements.

E. Clinical instruction must be conducted in a nursing home or a hospital-based skilled nursing facility unit.

F. Training programs that do not meet the minimum standards and cannot provide an acceptable plan for correcting deficiencies will be eliminated from participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006).

§10013. Trainee Responsibilities

A. Each nurse aide trainee should be clearly identified as a trainee during all clinical portions of the training. Identification should be recognizable to residents, family members, visitors and staff.

B. Trainees must take the competency evaluation (through skills demonstration and either written or oral examination) within 30 days after completion of the training program and be certified within 4 months from the date they begin training.

1. Trainees will be provided with a maximum of three opportunities within one year following completion of the training program to successfully complete the competency evaluation program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006).

§10015. Training Curriculum

A. Each nurse aide training program shall provide all trainees with a nursing facility orientation that is not included in the required 80 hours of core curriculum. The orientation program shall include, but is not limited to:

1. an explanation of the facility's organizational structure;
2. the facility's policies and procedures;
3. discussion of the facility's philosophy of care;
4. description of the resident population; and
5. employee rules.

B. Core Curriculum

1. The curriculum content for the Nurse Aide Training Program must include material which provides a basic level of knowledge and demonstrable skills for each individual completing the program. The content should include the needs of populations which may be served by an individual nursing facility.

a. The core curriculum must be a minimum of 80 hours in length and consist of 40 classroom hours and 40 clinical hours.

b. Each unit objective must be behaviorally-stated for each topic of instruction. Each objective must state performance criteria which are measurable and will serve as the basis for the competency evaluation.

i. The unit objectives will be reviewed with the trainees at the beginning of each unit so each trainee will know what is expected of him/her in each part of the training.

c. All facility-based nurse aide training programs must adapt the content and skills training application to the specific population being served.

C. Minimum Curriculum

1. The goal of the nurse aide training and competency evaluation program is the provision of quality services to residents by nurse aides who are able to:

a. communicate and interact competently on a one-to-one basis with residents as part of the team implementing resident care;

b. demonstrate sensitivity to the resident's emotional, social and mental health needs through skillful, directed interactions;

c. assist residents in attaining and maintaining functional independence;

d. exhibit behavior to support and promote the rights of residents; and

e. demonstrate proficiency in the skills needed to support the assessment of the health, physical condition and well-being of residents.

2. Non-facility based training programs must provide 32 hours of instruction prior to a trainee's direct involvement with a resident. Sixteen or more hours shall be devoted to supervised skills training and 16 hours shall be provided in the classroom and, at a minimum, shall include:

- a. communication and interpersonal skills;
- b. infection control;
- c. safety and emergency procedures;
- d. promoting residents' independence; and
- e. respecting residents' rights.

3. Facility-based training programs must provide at least 16 hours of instruction prior to a trainee's direct involvement with a nursing facility resident. The 16 hours of instruction shall be devoted to areas listed in Paragraph C of this §10015.

D. The training program must address the psychosocial, physical and environmental needs, as well as the medical needs of the residents being served by the nursing facility. It must also teach trainees about the attitudes and behaviors that make a positive impact on the emotional conditions of residents and focus on the restoration and maintenance of the resident's independence.

E. The training program must be developed and conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies in the following areas:

1. basic nursing skills including, but not limited to:
 - a. bed-making;
 - b. taking vital signs;
 - c. measuring height and weight;
 - d. caring for the resident's environment;
 - e. measuring fluid and nutrient intake and output;
 - f. assisting in the provision of proper nutritional care;
 - g. ambulating and transferring residents;
 - h. using body mechanics;
 - i. maintaining infection control and safety standards;
 - j. attaining and maintaining proficiency in cardiopulmonary resuscitation;
 - k. caring for residents when death is imminent;
 - l. recognizing abnormal signs and symptoms of common diseases and conditions; and
 - m. caring for residents suffering from Alzheimer's disease or dementia;
2. personal care skills including, but not limited to:
 - a. bathing, including mouth care;
 - b. grooming and dressing;
 - c. toileting;
 - d. assisting with eating and hydration; and
 - e. skin care;
3. mental health and social service needs including, but not limited to:
 - a. modifying his/her own behavior in response to a resident's behavior;
 - b. identifying developmental tasks associated with the aging process and using task analysis to increase independence;
 - c. providing training in and the opportunity for self-care according to a resident's capabilities;
 - d. demonstrating principles of behavior modification by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated;
 - e. demonstrating skills which support age-appropriate behavior by allowing the resident to make personal choices;
 - f. providing and reinforcing behavior consistent with maintaining a resident's dignity; and
 - g. utilizing a resident's family as a source of emotional support;
4. basic restorative services including, but not limited to:

- a. the use of assistive devices in ambulation, eating and dressing;
- b. maintenance of range of motion;
- c. proper turning and positioning in a bed and a chair;
- d. transferring a resident;
- e. bowel and bladder training; and
- f. care and use of prosthetic devices, such as hearing aids, artificial eyes or artificial limbs; and

5. maintaining a resident's rights including, but not limited to:

- a. assisting a resident to vote;
- b. providing privacy and maintaining confidentiality;
- c. allowing the resident to make personal choices to accommodate individual needs;
- d. giving assistance in resolving grievances;
- e. providing needed assistance in getting to, and participating in, resident and family groups and other activities;
- f. maintaining reasonable care of a resident's personal possessions;
- g. providing care which frees the resident from abuse, mistreatment or neglect and reporting any instances of poor care to appropriate facility staff; and
- h. maintaining the resident's environment and care so as to minimize the need for physical and chemical restraints.

F. Curriculum Approval

1. To get a nurse aide training program approved, the facility or school must submit the following items to the department:

- a. a copy of the curriculum and final exam;
- b. the name of the coordinator and instructors with:
 - i. a resume for each; and
 - ii. a copy of a train the trainer certificate or verification of competence to teach adult learners as defined by the state; and
- c. the time slots for each topic of classroom and clinical instruction.

2. If a school is applying for approval, it must identify the physical location used for classroom instruction and for clinical experience. A school must also submit clinical contracts and copies of final exams.

3. If a facility or school that has an approved curriculum ceases to provide a nurse aide training and competency evaluation program for a two year period, it must reapply and receive approval from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006).

§10017. Training Instructors

A. Program Coordinator. Every nurse aide training program must have a program coordinator who provides general supervision of the training received by the nurse aide trainees.

1. The program coordinator must be a registered nurse (RN) and must have the following experience and qualifications:

a. a minimum of two years of nursing experience, of which at least one year must be in caring for the elderly or chronically ill, obtained through employment in any of the following:

- i. a nursing facility/unit;
- ii. a geriatrics department;
- iii. a chronic care hospital;
- iv. other long-term care setting; or
- v. experience in varied responsibilities including,

but not limited to, direct resident care or supervision and staff education; and

b. completion of VTIE, CTTIE, "train-the-trainer" type program or a master's degree or higher.

2. The program coordinator may supervise no more than two nurse aide training programs and must be on the premises where the program is being conducted for at least 50 percent of the duration of the program.

B. Program Trainers. Qualified resource personnel from the health field may participate as program trainers.

1. Qualified resource personnel must have a minimum of one year of experience in their field and must be licensed, registered and/or certified, if applicable, and may include:

- a. registered nurses;
- b. licensed practical/vocational nurses;
- c. pharmacists;
- d. dietitians;
- e. social workers;
- f. sanitarians;
- g. fire safety experts;
- h. nursing home administrators;
- i. gerontologists;
- j. psychologists;
- k. physical and occupational therapists;
- l. activities specialists; and
- m. speech/language/hearing therapists.

2. All program trainers must have a minimum of one year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

3. The training program may utilize other persons such as residents, experienced aides and ombudsmen as resource personnel if these persons are needed to meet the planned program objectives or a specific unit of training.

C. Licensed practical (vocational) nurses, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have two years of experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

1. Such experience is normally obtained through employment in:

- a. a nursing facility;
- b. a geriatrics department;
- c. a chronic care hospital; or
- d. other long-term care setting.

2. Experience in resident care, supervision and staff education is preferred.

D. The ratio of instructors to trainees in clinical training is 1:10 and the ratio of instructors to trainees in the classroom should not exceed 1:23.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2076 (November 2006).

§10019. Training Program Responsibilities

A. The facility/school shall not accept a nurse aide trainee into a training program until the facility or school determines that the nurse aide trainee:

1. has not been convicted or found guilty by a court of law of:

- a. abusing, neglecting or mistreating the elderly or infirm; or
- b. misappropriating a resident's property; or

2. has not had a finding of abuse, neglect, mistreatment or misappropriation of a resident's property placed on the Nurse Aide Registry or the Direct Service Worker Registry.

B. For facility-based training programs, the facility can permit trainees to provide only that care for which they have demonstrated competency.

C. Any entity responsible for the nurse aide training and competency evaluation program must report to the Nurse Aide Registry within 30 days the names of all individuals who have satisfactorily passed the competency evaluation.

D. When a nurse aide has successfully completed a training and competency evaluation program, in a non-facility based program, the entity must submit the appropriate form to the Louisiana Nurse Aide Registry so that the nurse aide can be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2077 (November 2006).

§10021. Competency Evaluation

A. Written or oral examinations will be provided by an entity or organization approved by the department. The examination will reflect the content and emphasis of the training program and will be developed in accordance with accepted educational principles.

B. The written evaluation component will be given in English unless the aide will be working in a facility in which the predominant language is something other than English. In this case, the examination may be taken in the written predominant language used in the facility, dependent upon the availability of a translator who will maintain the integrity of the examination.

C. A substitute examination, including an oral component, will be developed for those nurse aides with limited literacy skills. This examination must contain all of the content that is included in the written examination and must include a written reading comprehension portion that will determine competency to read job-related information.

D. The evaluation program must be developed and conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies listed in Paragraph E of §10015.

E. For the skills training component of the evaluation program, each nurse aide training program will develop a performance record of duties/skills taught which will verify proficiency attained.

1. The performance record will consist of, at a minimum:

- a. a listing of the duties/skills expected to be learned in the program; and
- b. space to note satisfactory or unsatisfactory performance of each task including:
 - i. the date of the performance; and
 - ii. the name of the instructor supervising the performance.

2. At the completion of the nurse aide training program, the nurse aide and his/her employer will receive a copy of this record. If the individual did not successfully perform all duties/skills on this performance record, he/she will receive training for all duties and skills not satisfactorily performed until satisfactory performance is confirmed.

F. The skills demonstration of the competency evaluation program will consist of a minimum performance of five tasks, all of which are included in the performance record. These five tasks will be selected for each aide from a pool of evaluation tasks which have been ranked according to degree of difficulty. A random selection of tasks will be made with at least one task from each degree of difficulty being selected. Such evaluation tasks may include, but are not limited to:

1. making an occupied bed;
2. taking and recording a resident's blood pressure, temperature, pulse and respirations;
3. orienting a new resident to the facility;
4. performing a range of motion exercises;
5. giving a bed bath;
6. positioning a resident on his/her side; and
7. responding to a demented resident who is calling out, yelling or indicating distress or anger.

G. Task-related evaluation items will be developed to evaluate the non-task oriented competency of the trainee, such as communication and psychosocial skills. The skills demonstration portion of the competency evaluation may be held in either a nursing facility or in a laboratory equipped for this purpose.

H. In the case of nursing facilities that provide their own training programs, the facility may contact an approved entity to provide competency evaluation. The clinical portion of the competency evaluation must be given in a nursing facility, but must be administered by personnel not associated with the facility. The competency evaluation may be proctored by facility personnel if the competency evaluation is:

1. secured from tampering;
2. standardized;
3. scored by a testing, educational or other organization approved by the state or scored by the state itself; and
4. requires no actual administration or scoring by facility personnel.

I. The examiner conducting the clinical competency evaluation for any individual trainee must be approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2077 (November 2006).

§10023. Compliance with Training and Competency Evaluation

A. The department shall review all components of a training and competency evaluation program for compliance with federal and state regulations.

1. For facility-based programs, after initial approval of a training and competency evaluation program, the department will conduct an initial one year post-approval review at the annual survey to determine the program's implementation of and compliance with the requirements.

2. For non-facility based programs, the department will conduct an initial one year post-approval review and thereafter will conduct a review every two years.

B. After the one year post-approval review, an on-site review of the program will be conducted at least every two years.

C. Programs not meeting minimum requirements may be terminated if the program does not provide an acceptable plan for correcting deficiencies.

D. Programs refusing to permit unannounced visits by the department will be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006).

§10025. Nurse Aide Responsibilities

A. A nurse aide must perform at least eight hours of nursing or nursing-related services in an approved setting during every consecutive 24-month period for pay after completion of a training and competency evaluation program to maintain certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006).

Subchapter C. Nurse Aide Registry

§10033. General Provisions

A. The Department of Health and Hospitals shall develop and maintain a registry for individuals who have successfully completed a nurse aide training and/or competency evaluation program. Each individual listed on the registry will have the following information maintained and retrievable:

1. name;
2. address;
3. Social Security number;
4. phone number;
5. place of employment;
6. date of employment;
7. date employment ceased;
8. state certification number; and
9. documentation of any investigation including codes for specific findings of a resident's:

- a. abuse;
- b. neglect;
- c. misappropriated property; and
- d. an accurate summary of findings only after actions on findings are final.

B. Certifications are renewable every two years. The registry will verify renewals and whether the nurse aide has worked at least eight hours in an approved setting every 24 months after attaining certification.

C. Employers must use the registry to determine if a prospective hire is a certified nurse aide and if there is a finding placed on the registry that he/she has abused, neglected or misappropriated a resident's property or funds.

D. If there is a final and binding administrative decision to place a finding on the registry or if there is a final conviction, guilty plea or no contest plea to a crime(s) by a nurse aide against the elderly, infirm or a nursing facility resident, the department shall place the adverse finding on the registry. Record of the occurrence and associated findings will remain permanently on the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006).

§10035. Certification by Reciprocity

A. Nurse aides may become certified by reciprocity from other states. Applicants must submit to the Nurse Aide Registry the following information:

1. his/her name;
2. his/her Social Security number;
3. the certification number in the other state;
4. the address of the other state's registry;
5. his/her former place of employment; and
6. the date of employment and termination.

B. After verification of certification in the other state, the registry will certify the aide in Louisiana. Likewise, the registry will be responsible for granting reciprocity to other states.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006).

Subchapter D. Provider Participation

§10045. Provider Responsibilities

A. A person cannot be employed as a nurse aide or nurse aide trainee by a facility for more than four months unless he/she has satisfactorily completed an approved training and competency evaluation program.

B. A person cannot be employed as a nurse aide or nurse aide trainee if there is a final administrative or judicial court decision that the nurse aide or trainee has:

1. committed abuse, neglect or mistreatment of the elderly, infirm or nursing facility resident; or
2. misappropriated a resident's property.

C. The provider must complete and send the appropriate form to the registry to notify the registry of employment or termination of a certified nurse aide.

D. All facilities will continue to provide on-going training on a routine basis in groups and, as necessary in specific situations, on a one-to-one basis.

1. Each nurse aide must receive and be compensated for 12 hours of on-going training per year.

2. Training can be received in the unit as long as it is:
 - a. directed toward skills improvement;
 - b. provided by appropriately trained staff; and
 - c. documented.

E. No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

F. If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the state must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006).

Subchapter E. Violations

§10055. Disqualification of Training Programs

A. The department prohibits nursing facilities from offering nurse aide training programs when the facilities have:

1. been determined to be out of compliance by the Medicaid or Medicare Programs until the end of a two-year period during which time no survey or investigation finds any deficiencies; or
2. operated under a waiver granted on the basis of a demonstration that the facility is unable to provide RN coverage in excess of 48 hours during a week.

B. The department may prohibit nursing facilities from offering nurse aide training programs when the facilities have been sanctioned with:

1. civil monetary penalties of \$5,000 or more;
2. termination of vendor payments;
3. a ban on new admissions;
4. placement under temporary management or closure of a facility with transfer of residents; or
5. extended or partial extended survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006).

§10057. Allegations of Nurse Aide Wrong-Doing

A. The department, through its Bureau of Appeals, has provided for a process for the review and investigation of all allegations of wrong-doing by nurse aides employed in nursing facilities. Certified nurse aides and nurse aide trainees must not:

1. use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on a resident in a nursing facility; nor
2. neglect a resident or commit misappropriation of a resident's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006).

§10059. Notice of Violation

A. When there are substantiated charges against the nurse aide, either through oral or written evidence, the department will notify the individual(s) implicated in the investigation of the following information by certified mail:

1. the nature of the violation(s) and the date and time of each occurrence;
2. the department's intent to report the violation(s) to the Nurse Aide Registry; and
3. the right to request an informal dispute resolution and/or the right to an administrative hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006).

§10061. Informal Dispute Resolution

A. When a nurse aide feels that he/she has been wrongly accused, the following procedure shall be followed.

1. The nurse aide may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the agency's notice of violation. The request for an IDR must be made to the department in writing.

2. The IDR is designed:

- a. to provide an opportunity for the nurse aide to informally review the situation;
- b. for the agency to offer alternatives based on corrections or clarifications, if any; and
- c. for the nurse aide to evaluate the necessity for seeking an administrative hearing.

3. An IDR meeting will be arranged within 20 days of the request.

4. During the IDR, the nurse aide will be afforded the opportunity to:

- a. talk with agency personnel involved in the situation;
- b. review pertinent documents on which the alleged violation is based;
- c. ask questions;
- d. seek clarifications; and
- e. provide additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2080 (November 2006).

Subchapter F. Administrative Hearings

§10071. General Provisions

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the nurse aide may request an administrative hearing.

1. The request for an administrative hearing must be made in writing to the department's Bureau of Appeals.

2. The request must contain a statement setting forth the specific charges with which the nurse aide disagrees and the reasons for this disagreement.

3. Unless a timely and proper request is received by the Bureau of Appeals, the findings of the department shall be considered a final and binding administrative determination.

- a. Notification of the finding of abuse, neglect and/or misappropriation will then be sent to the Nurse Aide Registry to be recorded.

B. When an administrative hearing is scheduled, the Bureau of Appeals shall notify the nurse aide, his/her representative and the agency representative in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

- a. date of the hearing;
- b. time of the hearing; and
- c. the place of the hearing.

C. The administrative hearing shall be conducted by an administrative law judge from the Bureau of Appeals as authorized by the Administrative Procedure Act, R.S. 49:950 et seq., and according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A transcript will be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the transcript.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

- a. call and examine parties and witnesses;
- b. introduce exhibits;
- c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;
- d. impeach any witness regardless of which party first called him to testify; and
- e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

- a. Documentary evidence may be received in the form of copies or excerpts.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. Each party has the burden of proving whatever facts he/she must establish to sustain his/her position.

- a. The burden of producing evidence to substantiate the written allegation(s) will be on the department and the provider of services.

- b. When the charge of abuse, neglect or misappropriation is substantiated, the nurse aide may not rest on the mere denial in his/her testimony and pleading(s) but must set forth specific facts and produce evidence to disprove or contest the charge(s).

D. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the provider.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

- a. his/her name;
- b. address;
- c. telephone number; and
- d. the party being represented.

E. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
 2. shall prepare a written proposed decision which will contain:
 - a. findings of fact;
 - b. a determination of the issues presented;
 - c. a citation of applicable policy and regulations;
- and
- d. an order.

F. The written proposed decision is provided to the secretary of the department. The secretary may:

1. adopt the proposed decision;
 2. reject the proposed decision based upon the record;
- or
3. remand the proposed decision to the administrative law judge to take additional evidence:
 - a. if the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary.

G. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the nurse aide at his/her last known address and to any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2080 (November 2006).

§10073. Preliminary Conferences

A. Although not specifically required, the Bureau of Appeals may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplification of issues;
2. resolution of controversial matters;
3. exchange of documents and information;
4. stipulations of fact to avoid unnecessary introduction of evidence at the formal review;
5. the identification of witnesses; and
6. other matters as may aid disposition of the issues.

B. When the Bureau of Appeals schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

1. The hearing shall be scheduled within 30 calendar days following the completion of the preliminary conference or at a time mutually convenient to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006).

§10075. Witnesses and Subpoenas

A. Each party shall arrange for the presence of their witnesses at the hearing.

B. A subpoena to compel the attendance of a witness may be issued by the administrative law judge:

1. upon written request by a party and a showing of the need for such action; or
2. on his own motion.

C. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served;
2. precisely describe the material that is desired to be produced;
3. state the materiality thereof to the issue involved in the proceeding; and
4. include a statement that, to the best of the applicant's knowledge, the witness has such items in his possession or under his control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006).

§10077. Continuances or Further Hearings

A. The administrative law judge may continue a hearing to another time or place, or order a further hearing on his own motion or at the request of any party who shows good cause.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or
2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence:

a. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be given to each party present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006).

§10079. Failure to Appear at Administrative Hearings

A. If a nurse aide fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the Bureau of Appeals dismissing the appeal. A copy of the notice shall be mailed to each party.

B. Any dismissal may be rescinded upon order of the Bureau of Appeals if the nurse aide:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and
2. provides evidence of good cause for his/her failure to appear at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#084

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Nursing Facilities

Nurse Aide Training and Competency Evaluation Program (LAC 50:II.10143 and 10145)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals LAC 50:II.10143 and 10145 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 101. Nursing Facilities

Subchapter E. Nurse Aide Training and Competency Evaluation Program

§10143. OBRA Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), repealed LR 32:2082 (November 2006).

§10145. State Review of Compliance with Program Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), repealed LR 32:2082 (November 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#083

RULE

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Personal Care Services—Long Term (LAC 50:XV.12901 and 12905)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amended LAC 50:XV.12901 and 12905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of personal care services is to enable an individual whose needs would otherwise require placement in a nursing facility to remain safely in that individual's own home. The mission of Medicaid-funded personal care services is to supplement the family and/or community supports that are available to maintain the recipient in the community. This service program is not intended to be a substitute for available family and/or community supports. Personal care services must be provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid services being provided to the recipient and will be considered in conjunction with those other services. Personal care services will be provided in a manner consistent with the basic principles of consumer direction as set forth in §12907.

B. ...

C. Authorization. Personal care services (PCS) shall be authorized by the Bureau of Health Services Financing or its designee. The department or its designee will review the completed assessment, supporting documentation, plan of care or any other pertinent documents to determine whether the recipient meets the medical necessity criteria for personal care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2082 (November 2006).

§12905. Recipient Qualifications

A. - B. ...

1. meets the medical standards for admission to a nursing facility and requires assistance with at least one or more activities of daily living;

B.2. - 3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2082 (November 2006).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#087

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Pharmacy Benefits Management Program
Erectile Dysfunction Drug Coverage
(LAC 50:XXIX.115)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XXIX.115 in the Medical Assistance Program as authorized by R.S. 35:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§115. Drug Coverage Limits

A. - B.2. ...

C. Erectile Dysfunction Drugs. Prescription drugs for the treatment of sexual or erectile dysfunction shall not be covered or reimbursed under the Medicaid Program. Erectile Dysfunction drugs shall only be covered for the treatment of conditions other than sexual or erectile dysfunction for which the drugs have been approved by the Food and Drug Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), amended LR 32:2083 (November 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#088

RULE

Department of Health and Hospitals Office of the Secretary Division of Long Term Supports and Services

Nursing Facilities—Standards for Payment
Level of Care Determination (LAC 50:II.10154)

The Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services adopts LAC 50:II.10154 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 101. Standards for Payment for Nursing Facilities

Subchapter G. Levels of Care

§10154. Determination of Nursing Facility Level of Care

A. The purpose of the level of care (LOC) determination is to assure that individuals meet the medical necessity requirements for admission to and continued stay in a nursing facility. In addition, the LOC determination process assists persons with long-term or chronic health care needs in making informed decisions and selecting options that meet their needs and reflect their preferences.

B. Level of Care Determination. The following tools shall be utilized to gather evaluative data for the purpose of determining the level of care for nursing facility services:

1. the Minimum Data Set Assessment®, a standardized, primary screening and assessment tool of health status which measures the physical, medical, psychological and social functioning of long term care participants;

2. the Preadmission Screening and Annual Resident Review (PASARR), if there are indications that the individual may require specialized care because of mental illness or mental retardation; and

3. the Louisiana Nursing Facility Level of Care Eligibility Tool (LOCET), an objective and impartial instrument which determines whether the individual has met the requirements for level of care for nursing facility services as set in this Subchapter G. A desired outcome of using the LOCET will be that the services offered to the long term care population will benefit those who are most at need.

C. Other documentation may be required for the determination of level of care as directed by the department.

D. The evaluative data used for the LOC determination must be reviewed and approved by the Department of Health and Hospitals or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:2083 (November 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#086

RULE

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Nursing Facilities—Standards for Payment Medical Eligibility Determination Admission Review and Pre-Admission Screening (LAC 50:II.10146 and 10157)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amended LAC 50:II.10146 and 10157 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 101. Nursing Facilities

Subchapter F. Vendor Payment

§10146. Medical Eligibility Determination

A. The following documentation requirements and procedures are required in order to determine medical eligibility for nursing facility services and hospice care in a nursing facility.

B. The following time frames must be met when requesting a medical eligibility determination for an individual admitted to a nursing facility. Conversion from Medicare status to Medicaid vendor payment is considered a new admission.

1. Appropriate documentation of admission information must be received within 20 working days of admission.

2. If incomplete information is received, certification of medical eligibility will be denied. The reason for denial will be given as incomplete information provided.

3. If additional information is subsequently received within the initial 20-working-day time frame, and the resident meets all requirements, the effective date of certification is the date of admission.

4. If the additional information is received after the initial 20-day time frame and the resident meets all of the requirements, the effective date of the certification shall be the date that all completed information is received.

C. Documentation Requirements for New Admissions

1. Notice of Admission or Change (Form 148) which:
a. verifies the individual's admission as a private pay resident or indicates that Medicaid or Medicare certification is being requested; and

b. provides the date of the resident's application for Medicaid if later than the date of admission;

2. a physician's order recommending nursing facility admission and documentation specifying the applicant's current health status;

NOTE: The physician's order must be signed by a physician licensed in Louisiana and dated not more than 30 days prior to admission or application if the resident applies for Medicaid after admission; and

3. Pre-Admission Screening/Readmission Screening (Level I PAS/RAS) form which:

a. is signed and dated by a physician licensed in Louisiana; and

b. lists a diagnosis and medication on the Statement of Medical Status form that is consistent with PAS/RAS;

NOTE: If a second level screen is indicated due to a diagnosis or suspected diagnosis of mental illness or mental retardation, it must be completed prior to admission unless approved by the Office of Aging and Adult Services (OAAS) under a categorical determination.

D. Documentation Requirements for Readmission from the Hospital

1. A Form 148 which indicates:

a. the date Medicaid billing was discontinued if the bed was held; or

b. the date the resident was discharged to the hospital if the bed was not held; and

c. the date of the resident's readmission to the facility and whether they are readmitted as Medicare or Medicaid status.

2. A transfer form, discharge summary or physician's orders which specifies diagnosis, medication regime, level of care, and includes a dated physician's signature; and

3. - 3.c.Note ...

E. Documentation Requirements for Facility to Facility Transfer

1. ...

2. The receiving facility must complete:

a. A Form 148 indicating date of admission; and

b. A transfer form or physician's orders which includes the diagnosis, medication regime, level of care, physician's signature and date.

F. Documentation Requirements for New Admission to SNF 18 (Medicare) with Medicaid Co-Insurance

1. - 1.b. ...

2. A physician statement completed within 30 days of admission;

3. - 3.Note ...

G. Documentation Requirements for Readmission from the Hospital Directly to SNF 18 (Medicare)

1. A Form 148 which indicates the date that Medicaid co-insurance will be effective. No further information is required until the resident converts to Medicaid vendor payment.

H. Documentation Requirements for Termination of Medicare with Change from Medicaid Co-Insurance to Medicaid Vendor Payment

1. A Form 148 which indicates the date that the Medicare benefit period ends and the first date of Medicaid coverage;

2. A new or updated physician's statement. An updated physician's statement may be submitted in lieu of having a new one completed. An updated physician's statement is one that has been reviewed by the attending

physician, includes any changes in diagnosis or treatment regimen, and has been re-signed and dated by the physician. This is viewed as a new admission because Medicare is a different payment source and the resident must be considered discharged from Medicare status in order to convert from Medicare to Medicaid. For this reason, another physician's statement is required and must be submitted within 20 working days of admissions; and

3. - 3.Note ...

I. Documentation Requirements Regarding the Death of a Resident. A Form 148 which specifies whether the death of the resident occurred in the nursing facility or in the hospital and the date of death.

J. Documentation Requirements for Admission to a Skilled Nursing/Infectious Disease (SN-ID) LOC

1. - 1.c. ...

d. Medical eligibility will be considered upon receipt of the following information.

i. For all new admissions, a Form 148, physician's order, and Form PAS/RAS must be completed as required for other nursing facility admissions. When requesting a level of care change, a Form 149-B may be submitted in lieu of the physician's order.

d.ii. - 2.b. ...

c. Medical eligibility will be considered upon receipt of the following information.

i. For all new admissions, a Form 148, physician's order, and Form PAS/RAS must be completed the same as for other nursing facility admissions. When requesting a level of care change, a Form 149-B may be submitted in lieu of the physician's order.

ii. - ii.(e). ...

K. The following time frames must be met when requesting a medical eligibility determination for hospice care in a nursing facility. These requirements are in addition to those previously published January 20, 1996 in the Medicaid Standards for Payment for Nursing Facilities (Chapter 25, Admission Review and Preadmission Screening).

1. - 4. ...

5. If additional information necessary to make a determination is received after the initial 20-day time frame, the effective date shall be no earlier than the date all completed information is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1317 (October 1997), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2084 (November 2006).

Subchapter H. Admission Review and Pre-Admission Screening

§10157. General Provisions

A. Evaluative data for medical certification (level of care determination) shall be submitted to the appropriate OAAS Regional Admission Review Office.

1. ...

2. applications for persons already in nursing facilities;

3. transfers of persons from one facility to another;

4. - 5. ...

B. A pre-admission Level of Care Eligibility Tool (LOCET) assessment shall be performed by an appropriate professional for Medicaid applicants or recipients requesting nursing facility admission.

C. Prior to admitting a resident to the facility, the following information is required for documentation into the medical record:

1. a physician's order which includes the applicant's medical history, diagnosis, history of mental illness, mental retardation, or developmental disability;

2. - 11. ...

12. rehabilitative potential; and

13. the physician's signature and the date of signature.

14. Repealed.

NOTE: The medical/social evaluation shall not be completed more than 30 days prior to admission and a physician must personally approve a recommendation that an individual be admitted to a nursing facility.

D. Alternate Attending Physician. If the physician who performed the pre-admission examination does not provide continuing care after admission to the facility, the following steps shall be taken to secure an attending physician.

1. The resident or responsible party shall obtain an alternate physician within 48 hours after admission.

2. If they are unable to obtain a physician, the facility shall be responsible for obtaining one within two working days with the resident's or responsible party's approval. There shall be documentation of contact with the physician within the required time frame.

3. The new physician shall perform the following tasks in the course of his normal treatment regimen within seven days of assuming care:

a. examine the resident;

b. review the information provided by the physician who conducted the pre-admission examination; and

c. furnish the facility with either a signed concurrence with the original physician's orders or submit alternate orders.

E. Tuberculosis Testing as Required by Public Health. Chapter II of the Public Health Manual, The Control of Diseases, Section 2:026 requires that any person admitted to a nursing facility shall have a complete history and physical examination by a licensed physician within 30 days prior to or 48 hours after admission. Any nursing facility resident who has complied with this provision shall be exempt from re-examination, i.e., upon transfer to another residential facility, the record of examination is transferred with the resident.

1. In compliance with the requirement for a complete history and physical examination, laboratory tests shall be completed and must include the following:

a. purified protein derivative skin test for tuberculosis (PPD-5TU) given by the Mantoux method intradermally; and

b. for residents over 35 years of age, a chest X-ray (completed no more than two weeks prior to admission).

2. The skin test and X-ray, if applicable, shall be evaluated by a licensed physician prior to the resident's admission to a nursing facility.

3. Office of Public Health (OPH) policy requires that a resident with evidence of active tuberculosis cannot be admitted to a nursing facility unless the examining physician states that the resident:

- a. is on an effective drug regimen;
- b. is responding to the prescribed treatment; and
- c. presents no imminent danger to the nursing facility's staff and other residents.

4. These statements shall be in writing, signed by the physician, and dated no more than two weeks prior to the resident's admission.

5. Additionally, no resident who has been diagnosed as having active tuberculosis or as being an asymptomatic carrier of this disease shall be admitted to a nursing facility, except under the supervision of the State Health Office (OPH). Tuberculosis is a reportable disease and shall be reported to the State Health Office through the public health unit in the parish where the nursing facility is located.

NOTE: A negative chest X-ray will allow the facility to admit the resident; provided, however, a Mantoux PPD test will be administered within 72 hours after admission. In a case where the medical record indicates resident has previously tested positive, a Mantoux PPD should not be performed.

F. Medical—Social Information. A physician's order and Form PASARR-1 shall be submitted for all applicants and recipients seeking initial certification. It is only required that Part A of the PASARR be completed by the facility.

1. The Form PASARR-1 shall be signed by the physician.

a. The physician shall date the Form PASARR-1 on the actual date he completes and signs the form. This will be the date medical certification begins.

2. A specific classification of care shall be indicated by the physician.

3. A transfer form, doctor's orders, or a statement signed by a physician who has knowledge of the case shall be completed on or before the date of transfer of a resident from one nursing facility to another.

4. Notification of Admission or Change (Form 148) shall be submitted to the OAAS regional office for admission or change in resident status.

a. Mental Status Evaluation. For persons with a mental health diagnosis, if either a current (within 30 days of application) mental status evaluation by a psychiatrist or a discharge summary from a mental health facility is available; it may be submitted with the Form PASARR-1. A psychiatrist shall sign and date these documents.

b. Psychological Evaluation. For persons with a diagnosis of mental retardation, if a psychological evaluation conducted by a psychologist is available, it may be submitted with Form PASARR-1. The evaluation shall not have been performed more than 90 days before the date certification is sought.

c. Insufficient Data. Additional documentation may be requested by letter if for any reason the data submitted is insufficient. If the PASARR-1 is not complete, it will be returned. The requested information must be received within 30 days from the date of the request.

d. Denial Due to Insufficient Data. If incomplete or insufficient data is submitted and the facility fails to respond to a request for additional data, a Notice of Medical Certification shall be issued indicating the person is not eligible due to insufficient documentation of the need for the requested services.

e. Screening for Active Treatment and Specialized Services. If the information on the Form PASARR-1 indicates the possibility of the need for active treatment for

MR and/or specialized services for MI, an independent assessment will be completed by representatives of the Office of Mental Health (OMH) or the Office for Citizens with Developmental Disabilities (OCDD).

NOTE: Medical certification cannot be guaranteed for a Medicaid applicant or recipient admitted to a facility before a service determination from the appropriate state agency is obtained.

G. Pre-Admission Screening. The nursing facility may not admit an individual with a diagnosis of mental illness or mental retardation without a pre-admission screening. The purpose of the pre-admission screening annual resident review process (PASARR) is to identify persons who have mental illness (MI) or mental retardation (MR). The form used is PASARR-1 which addresses the specific identifiers of mental illness or mental retardation that indicate that a more in-depth evaluation is needed to determine the need for specialized services. The need for this in-depth assessment does not necessarily mean that the individual cannot be admitted to a nursing facility, only that the need for other services must be determined.

1. Mental Illness (MI). An individual is considered to have a serious mental illness (MI) if the individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition (DSM III-R). A mental disorder may include schizophrenia, mood, paranoid, panic, or other severe anxiety disorder, somatoform disorder, personality disorder, other psychotic disorder, or another mental disorder that may lead to a chronic disability. Not inclusive would be a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as previously defined.

2. Mental Retardation (MR) and Related Conditions. An individual is considered to have MR if he/she has a level of retardation (mild, moderate, severe, or profound) as described in the American Association of Mental Deficiency's Manual on Classification in Mental Retardation (1983), page 1. Mental retardation refers to significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. These provisions also apply to persons with "related conditions," as defined by federal regulations. *Person with related conditions* means an individual who has a severe, chronic disability that meets all of the following conditions:

- a. it is attributable to:
 - i. cerebral palsy or epilepsy; or
 - ii. any other condition, other than mental illness, found to be closely related to MR because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with MR, and requires treatment or services similar to those required for these persons (any other condition includes autism);
- b. it is manifested before the person reaches age 22;
- c. it is likely to continue indefinitely;
- d. it results in substantial functional limitations in three or more of the following areas of major life activity:
 - i. self-care;
 - ii. understanding and use of language;
 - iii. learning;
 - iv. mobility;

- v. self-direction; and
- vi. capacity for independent living.

H. Categorical Determinations. In order to arrange appropriate care for residents in nursing homes, the state of Louisiana has defined certain categories of resident care needs. Individuals who fall into these categories may have a determination made regarding their need for specialized services or nursing care without an elaborate assessment. In each case that specialized services is determined not to be necessary, however, it remains the responsibility of the nursing facility to notify the appropriate agency if the resident's mental illness or mental retardation service needs changes and becomes a barrier to utilizing nursing facility services, or they become a danger to themselves or others. The following advance group determinations are made by OAAS and are for nursing facility care only. The state's mental health or mental retardation authorities must still make a determination regarding the need for specialized services for MI or MR.

H.1. - I.2. ...

J. If an individual has been identified as having a diagnosis of mental illness and/or mental retardation, the following process is followed prior to admission.

1. The Form PASARR-1 is completed, signed, and dated by the attending physician.

2. The Form PASARR-1 is forwarded to the appropriate agency (OMH or OCDD) for a screening determination to be made. A copy of the Form PASARR-1 is also submitted to the OAAS regional office with an indication that a second level screening has been requested.

3. OMH or OCDD will either make the service determination upon receipt or if further evaluation is necessary the Form PASARR-1 will be forwarded within two working days to an independent assessment team for Level II screening and recommendation of services needed by the resident.

4. If Level II screening is required, an assessment team will visit the resident to complete the evaluations.

5. After all necessary screening is completed OMH or OCDD will submit a written service determination to the OAAS Regional Office and the facility indicating whether nursing facility services are appropriate. The OAAS Regional Office will issue a Form 142 approving or denying medical certification.

6. All evaluation material will be forwarded to the nursing facility by OMH or OCDD for each resident evaluated.

7. A PAS determination must be made in writing within eight working days of referral by the agency or facility which performs the Level I identification screen. If a facility feels that an applicant for admission qualifies for one of the advance group determinations the following procedure should be followed.

a. The facility will submit form PASARR-1 to the department for review.

b. If approved, a categorical determination will be issued to the facility with the applicable time limitation for that category.

c. Based upon this approval, the facility may admit the individual but is still required to forward a copy of the admit packet to the state mental health or mental retardation authority so that they may make a determination for

specialized services in the facility. Part C is exempt from further referral for MI or MR unless the stay exceeds 30 days.

8. Annual Resident Review. All residents of a Medicaid SNF/NF with mental illness and/or mental retardation must be reviewed for services annually regardless of whether they were first screened under the PASARR requirements.

a. To the maximum extent practicable in order to avoid duplicate testing and effort, the PASARR must be coordinated with the routine resident assessment required.

K. - K.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2085 (November 2006)..

Frederick P. Cerise, M.D., M.P.H.
Secretary

0611#085

RULE

Department of Natural Resources Office of Conservation

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation hereby amends LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The action will adopt Statewide Order No. 29-R-06/07 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-05/06.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations Subpart 2. Statewide Order No. 29-R

Chapter 7. Fees §701. Definitions

* * *

Application for Site Clearance—an application to approve a procedural plan for site clearance verification of platform, well or structure abandonment developed by an operator/lessee and submitted to the Commissioner of Conservation, as authorized by LAC 43:XI.311 et seq., or successor regulations.

* * *

BOE—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 6.0.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November

1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006).

§703. Fee Schedule for Fiscal Year 2006-2007

A. Application Fees

Application Fees	Amount

Application for Site Clearance	\$600

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,706 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,353 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$682 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$682 per well.

C. ...

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers:

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	14
Tier 2	1-5,000	75
Tier 3	5,001-15,000	215
Tier 4	15,001-30,000	355
Tier 5	30,001-60,000	565
Tier 6	60,001-110,000	780
Tier 7	110,001-9,999,999	959

E. - E.3. ...

F. Pipeline Safety Inspection Fees

1. Owners/Operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$18 per mile, or a minimum of \$320, whichever is greater.

2. Owners/Operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$18 per mile, or a minimum of \$320, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006).

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-06/07 and if

any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-06/07) supersedes Statewide Order No. 29-R-05/06 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), , LR 31:2950 (November 2005), LR 32:2088 (November 2006).

James H. Welsh
Commissioner

0611#042

RULE

Department of Natural Resources Office of the Secretary

Oyster Lease Acquisition and Compensation Program (LAC 43:I.850-895)

Under the authority of the laws of the state of Louisiana and in accordance with provisions of Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950, including the Oyster Lease Acquisition and Compensation Program under R.S. 56:432.1, with the general authority of the Department of Natural Resources under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, and with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary hereby promulgates Rules to govern the Oyster Lease Acquisition and Compensation Program, LAC 43:I.851, 853, 855, 857, 859, 861, 863, 865, 867, and 869 and to replace or repeal the existing provisions of LAC 43:I.Chapter 8, Subchapter B and Subchapter C in their entirety.

The Rule governs the administration of the Oyster Lease Acquisition and Compensation Program by the department, in accord with R.S. 56:432.1, for the acquisition of and compensation for oyster leases or portions of oyster leases upon which occurs or will occur dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration. The proposed Rule repeals the existing provisions of LAC 43:I.Chapter 8, Subchapter B and Subchapter C in their entirety as the authorizing statutory provisions of the former Oyster Lease Relocation Program have been replaced or repealed by Acts 2006, No. 425. The basis and rationale for this Rule are to implement Acts 2006, No. 425, and to comply with the new provisions of R.S. 56:432.1 enacted thereunder.

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary

Chapter 8. Coastal Protection, Conservation, and Restoration

Subchapter B. Oyster Lease Acquisition and Compensation Program

§850. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998), repealed LR 32:2089 (November 2006).

§851. Purpose and Authority

A. This Subchapter sets forth the rules for the acquisition of and compensation for oyster leases by the department when necessary for purposes of coastal protection, conservation, or restoration. The department may acquire oyster leases, in whole or in part, for such purposes on behalf of the state to the extent that the leases are or may be directly affected by the dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, or restoration project.

B. These regulations are adopted pursuant to Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950, including the Oyster Lease Acquisition and Compensation Program under R.S. 56:432.1 and the general authority of the department under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006).

§852. Notification of Leaseholders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998), repealed LR 32:2089 (November 2006).

§853. Construction and Usage

A. The following shall be observed regarding the construction and usage of these regulations.

1. Unless otherwise specifically stated, the singular form of any noun includes the plural and the masculine form of any noun includes the feminine.

2. Unless otherwise specifically stated, all references to *Section* are to Sections of this Subchapter.

3. Any reference to *days* in this Subchapter shall refer to calendar days.

4. The day of the event from which a designated time period begins to run shall not be included in the computation of a period of time allowed or prescribed in these regulations. The last day of the period is to be included in the computation of a period of time allowed or prescribed in these regulations, unless it is a legal holiday, in which case the period runs until the end of the next day that is not a legal holiday. Nonetheless, the effective date of acquisition shall be on the date set by the department pursuant to these regulations and R.S. 56:432.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006).

§854. Exchange

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998), repealed LR 32:2089 (November 2006).

§855. Definitions

A. The following shall apply for purposes of these regulations.

Affected Acreage—the portion of an affected lease located within a direct impact area of a project.

Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a direct impact area of a project.

Coastal Protection, Conservation, or Restoration—any project, plan, act, or activity for the protection, conservation, restoration, enhancement, creation, preservation, nourishment, maintenance, or management of the coast, coastal resources, coastal wetlands, and barrier shorelines or islands, including but not limited to projects authorized under any comprehensive coastal protection master plan or annual coastal protection plan issued pursuant to Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

Department—the Department of Natural Resources, its secretary, or his designee.

Direct Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a project is planned to occur or has occurred.

DWF—the Department of Wildlife and Fisheries, its secretary, or his designee.

Effective Date of Acquisition—the date set by the department in accordance with these regulations and R.S. 56:432.1 upon which the affected lease or affected acreage shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance.

Leaseholder—the last lessee of record, or his designee, of an oyster lease let by DWF pursuant to R.S. 56:425, et seq., as identified in records provided and maintained by DWF.

Marketable Oysters—includes both seed and market-size oysters as defined by DWF.

Oyster Resource Survey—any survey or sampling to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

Potential Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, and restoration project is projected, possible, or estimated to occur.

Potentially Affected Acreage—the portion of a lease located within the potential impact area of a project.

Potentially Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a potential impact area of a project.

Project—any project, plan, act, or activity recognized by the department as relating to coastal protection, conservation, or restoration.

Secretary—the Secretary of the Department of Natural Resources or his designee, unless otherwise specifically stated in this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006).

§856. Retention

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998), repealed LR 32:2090 (November 2006).

§857. Notification to Leaseholder of an Oyster Resource Survey; Procedures and Protocols for an Oyster Resource Survey

A. When appropriate, the secretary shall determine and delineate the potential impact area of a project and in making such decision may consult with the government agency or any public or private entity responsible for the project.

B. When the secretary determines that an existing oyster lease identified in records provided and maintained by DWF may, in whole or in part, be located within the direct impact area of a project, the secretary may conduct an oyster resource survey.

C. The secretary shall notify the leaseholder in writing at least 15 days prior to the oyster resource survey of the potentially affected acreage or potentially affected lease. The notification shall, at a minimum, include the following:

1. a brief description of the coastal protection, conservation, or restoration project, and a plat or map depicting the project and potentially affected lease or potentially affected acreage;

2. a copy of these regulations, R.S. 56:424, and R.S. 56:432.1;

3. the date and time of the oyster resource survey;

4. the name of and contact information for the person conducting the oyster resource survey;

5. a statement that the leaseholder or his designee may accompany the person conducting the oyster resource survey;

6. a statement that the state may acquire the potentially affected lease or potentially affected acreage to be surveyed or sampled, and if so, that the leaseholder will be compensated for any acquired lease or portion thereof in accordance with R.S. 56:432.1 and this Subchapter;

7. the name of and contact information for a person at the department to direct all inquiries regarding the project and the potentially affected lease or potentially affected acreage;

8. a statement that the leaseholder may provide to the department, through the contact person listed in the notice, any reasonably confirmable data or other information relevant to a determination of the compensation for any potentially affected lease or potentially affected acreage, within 60 days after the actual date of the oyster resource survey conducted pursuant to this Subchapter. Failure to provide such data or information within the specified time period may preclude consideration of such data by the secretary, the department, the person conducting the oyster resource survey, or the appraiser appointed thereby;

9. a statement that if the person conducting the oyster resource survey is unable to conduct the survey on the date provided in the notice, that such person will provide notice to the leaseholder of the new survey date and time by appropriate and reasonable means;

10. a statement that the oyster resource survey is to be conducted in the manner set forth under §857.E of this Subchapter; and

11. a statement that the department, the state of Louisiana, political subdivisions of the state, the United States, or any agency, agent, contractor, or employee of any of these entities is not subject to any obligation, responsibility, or liability in relation to or resulting from any surveying or sampling of any oyster lease, information provided to any leaseholder in relation to any surveying or sampling of any oyster lease, the timing of any acquisition of any part of any lease by the state pursuant to R.S. 56:432.1, the lack of acquisition of any part of any lease except as provided by R.S. 56:432.1, or any report pursuant to R.S. 56:432.2 or otherwise.

D. Any written notification from the secretary or the department to the leaseholder of a potentially affected lease or potentially affected acreage in accordance with this section shall be deemed legally sufficient if sent by certified United States mail, postage pre-paid, return receipt requested, or hand delivered, to the last address furnished to DWF by the leaseholder on the date of issuance of notice.

E. Oyster Resource Survey Procedures and Protocol

1. The intent of the oyster resource survey is to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

2. Assessment Procedure

- a. Should the secretary elect to obtain an oyster resource survey of a potentially affected lease or potentially affected acreage, he may select the person(s) to conduct the oyster resource survey considering all relevant criteria, including but not limited to prior experience, prior performance, demonstrated expert knowledge in the field of oyster biology, and the ability to perform concurrent task orders while maintaining high quality work. The person(s) so selected shall be contracted with by the department pursuant to R.S. 39:1481, et seq., or other applicable public contract law, and shall have the following minimum qualifications:

i. a college degree in biological science, or prior acceptance by a Louisiana federal or state court as an expert witness in the field of oyster biology or oyster ecology; and

ii. five years of professional experience conducting oyster lease surveys and standing oyster crop analyses.

b. Samples should be taken at a minimum within the area of a potentially affected lease delineated by the secretary as the potential impact area of the project for which the oyster resource survey is being conducted.

c. A written assessment of the results of the oyster resource survey shall be prepared.

d. Oyster resource survey methods and procedures used should be stated and identified in the written assessment.

e. Information and data from the oyster resource survey should be compiled, analyzed, and presented in tables, charts, and in a written format along with scale maps indicating the location of the oyster leases in relation to the proposed project, location of sample sites, number and size of both live and dead oysters, oyster size frequency distribution, mortality rates per group, and photographs of oyster samples.

f. An original copy of the written assessment shall be provided to and retained by the department, which may use it in accordance with the appraisal and valuation procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:424, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2090 (November 2006).

§858. Appeals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998), repealed LR 32:2091 (November 2006).

§859. Appraisal

A. The secretary shall determine or delineate the direct impact area of a project, and in making such decision, may consult with any public or private entity responsible for the project.

B. Should the secretary determine that an existing oyster lease identified in records provided and maintained by DWF is, in whole or in part, located within the direct impact area of a project, the secretary shall obtain an appraisal of the affected lease or affected acreage.

C. When the secretary elects to obtain an appraisal of an affected lease or affected acreage, he shall select the appraiser considering all relevant criteria, including but not limited to the following:

1. prior performance; education; experience in valuation of oyster leases; experience in valuation of unique properties and unusual estates; experience in valuation of various land classes; demonstrated expert knowledge in the field of real property appraisal; and, the ability to perform concurrent tasks orders while maintaining high quality work;

2. the appraiser so selected shall be contracted with by the department pursuant to R.S. 39:1481, et seq., or other

applicable public contract law, and shall have a current certification as a Louisiana certified general real estate appraiser; professional designation in the field of appraisal; and, five or more years professional experience conducting real property appraisals.

D. The appraiser shall estimate the fair market value of the affected lease or affected acreage to be acquired according to accepted appraisal methods, which may include analysis of comparable sales of other leases. The appraiser may also take into consideration any reasonably confirmable data or information supplied by any person or obtained through the appraisal process, and any data or information obtained through the oyster resource survey conducted in accordance with §857.

E. A written appraisal shall be prepared by the appraiser, estimating the fair market value of the affected lease or affected acreage, and explaining the valuation methodology. An original of the appraisal and a copy of all documents used to develop the appraisal shall be provided to the department, which may use it pursuant to the procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2091 (November 2006).

§861. Determination of Compensation

A. The secretary shall determine the compensation for any affected acreage to be acquired as follows.

1. If the department provides a time period of one year or more between issuance of a notice of acquisition pursuant to §863 and the effective date of acquisition, then compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §859.

2. If the department provides a time period of less than one year between issuance of a notice of acquisition pursuant to §863 and the effective date of acquisition, the compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §859 plus the value of such non-removable marketable oysters on the affected acreage, if any, as determined by the department, based upon reasonably confirmable data. The determination of value shall take into account the number of sacks of marketable oysters per acre, suitable acreage, natural mortality, current market price, and harvest cost.

3. Data for estimation of the value of non-removable marketable oysters shall be determined from the written assessment derived from the oyster resource survey conducted in accordance with §857. The department may also take into consideration any reasonably confirmable data or information supplied timely by any person in accordance with §857.

4. The appraiser and the department shall consider any reasonably confirmable data or other information supplied to the department by the leaseholder following the oyster resource survey conducted in accordance with §857. The department or the appraiser may disregard any information or data not submitted timely pursuant to §857.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2091 (November 2006).

§863. Notification to Leaseholder of Acquisition and Compensation

A. Should the secretary determine that an existing oyster lease issued by DWF is located within the direct impact area of a project and the project is necessary and proper for coastal protection, conservation, or restoration, the secretary may acquire the affected acreage on behalf of the state in accordance with this Section.

B. Acquisition shall be implemented by issuance of a notice of acquisition. Notice of acquisition may be mailed or delivered to the leaseholder no sooner than 60 days after the completion of the oyster resource survey conducted in accordance with §857. The notice shall be issued in writing to the leaseholder by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address furnished to DWF by the leaseholder on the date of issuance of notice. A copy of such notice shall be recorded in the conveyance records of any parish in which the affected acreage to be acquired or the affected lease is located.

C. Such notice of acquisition shall, at a minimum, include:

1. a description specifying affected acreage, or portion thereof, being acquired;
2. the effective date of acquisition;
3. a brief description of the coastal protection, conservation, or restoration project for which the acreage is being acquired;
4. a plat or map depicting the project and the affected lease or affected acreage to be acquired;
5. a copy of these regulations and R.S. 56:432.1;
6. a statement that the department will acquire the acreage described in the notice of acquisition, and that such acquisition shall automatically occur on the date specified in the notice;
7. a statement that the leaseholder retains full use and possession of the affected acreage to be acquired until the effective date of acquisition, and may, at his sole risk and expense, harvest any oysters or take any other action permitted under the affected lease until the effective date of acquisition;
8. a statement that the acquisition will be effective regardless of whether the leaseholder actually received the notice of acquisition;
9. a statement that the affected lease shall continue in full force and effect as to all remaining acreage under the lease other than the acquired acreage (in cases where only part of the affected lease is being acquired);
10. a statement that lease payments as otherwise required by R.S. 56:428 or 429 shall no longer be payable as to the acquired oyster lease acreage for the calendar year after the date on which the notice of acquisition is issued; but that payment must still be paid as to any remaining acreage under the lease if the lease is acquired only in part;
11. a statement that the leaseholder will either be allowed a period of one year or more from the date of issuance of notice of acquisition herein in which to remove any and all marketable oysters from the affected lease, at his

sole risk and expense, and that no compensation shall be allowed for oysters so removed or removable, or if the department states an effective date for the acquisition that is less than one year after the date of issuance, a statement that the compensation for the acreage to be acquired includes compensation for the non-removable marketable oysters as part of the attached acquisition payment;

12. a determination of compensation, stating the dollar amount that the department has determined in accordance with these regulations and R.S. 56:432.1 to be paid for the acquired acreage and the appraised value of the acquired acreage. If compensation is being paid for non-removable marketable oysters, a statement of the value thereof is also to be included;

13. a check, attached only to a notice of acquisition sent to the leaseholder's last address as furnished to DWF by the leaseholder on the date of issuance of notice, in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, in the name of the leaseholder of record in accordance with the records of DWF on the date of issuance of notice of acquisition herein;

14. a statement that acceptance or negotiation of the attached check (or draft) does not preclude a claim for additional compensation as provided in these regulations and R.S. 56:432.1;

15. if any amount due on a recorded lien or encumbrance has been withheld from the check for compensation, a statement indicating the name of the holder of the recorded lien or encumbrance, the amount withheld, and that payment of said amount has been made by the department to that holder;

16. a statement that the leaseholder may seek an administrative hearing in writing through the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment, pursuant to these regulations and R.S. 56:432.1, as to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper or whether the compensation issued by the department satisfied the regulations under this Subchapter, and that administrative or judicial review may be permissible, but that the procedures stated by law and these regulations must be followed or such right of review may be lost or impaired; and

17. a statement that a request for administrative or judicial review shall have no effect upon the validity of the acquisition of the acquired acreage, but only the compensation payable to the leaseholder, unless review is sought timely and the leaseholder proves that the project or action for which the acreage was acquired does not further coastal protection, conservation, or restoration.

D. Before issuing any notice of acquisition, the department shall make a reasonable attempt to determine whether any amount is due on a recorded lien or encumbrance in relation to any oyster lease covering the acreage to be acquired. The holder of the lien or encumbrance and the leaseholder may negotiate to allocate the compensation to be paid under the notice of acquisition by written agreement among them. Any such written

agreement must fully release and indemnify the department from any claim in relation to the acreage to be acquired or the compensation for such acreage.

1. If no such written agreement is provided on or before the date when the department issues the notice of acquisition, the department shall withhold the full amount of all liens or encumbrances covering any of the acreage to be acquired, up to the full amount of the compensation determined by the department. If the department timely receives such a written agreement, the department shall withhold the amount agreed by the lienholder or encumbrance holder. A statement of the name of the holder and the amount withheld in relation to each lien or encumbrance shall be issued to the leaseholder as part of the notice of acquisition.

2. Should the amount of compensation to be paid for the acquired acreage be insufficient to pay the entirety of the lien or encumbrance, any lien or encumbrance shall be paid in order of legal preference and all holders of any remaining or unpaid lien or encumbrance shall be notified of the reason for non-payment or partial payment and issued a copy of the notice of acquisition.

3. The department shall forward payment in the full amount of any withholding to the holder of the lien or encumbrance by certified United States mail, return receipt requested, postage pre-paid, or by pre-paid receipted courier or delivery service, or hand delivery, to the last address on file with the secretary of state, if any, or to any address provided to the department or DWF by the lien or encumbrance holder. A copy of the notice of acquisition and determination of compensation, showing the lien or encumbrance and the withholding in relation thereto, shall be attached to the payment.

4. If the department is unable to make delivery of the payment by these means, the department shall transfer funds in the full amount of the withholding to a trust account from which it may be drawn for the benefit of the holder of the lien or encumbrance by joint agreement of the holder and the department, upon request of the lienholder of record on the date the notice of acquisition is initially issued.

5. If funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151, et seq., at the sole discretion of the secretary.

E. If the department attempts issuance of notice of acquisition, determination of compensation, and the check pursuant to §863.C, at least once, and is unable to make delivery of the notice to the leaseholder thereby, the department shall re-issue the notice and the determination of compensation by certified United States mail, return receipt requested, to the leaseholder at his address on file with DWF on the date of the re-issuance. In such event, the department shall also publish a summary of such notice identifying the affected lease and acreage to be acquired, stating the effective date of the acquisition and providing a contact person at the department for all inquiries regarding the acquisition, in the official journal for all parishes in which any part of the acreage to be acquired is located. In addition, the following procedures shall apply.

1. If a Notice of Acquisition is re-issued under this Subsection, no check shall be attached to the re-issued notice. Instead, payment in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, shall be transferred into a trust account from which it may be drawn for the benefit of the leaseholder by joint agreement of the leaseholder and the department, upon request of the leaseholder listed with DWF on the date the notice of acquisition is initially issued. If said funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act as set forth in R.S. 9:151, et seq., at the sole discretion of the secretary.

2. A re-issued notice shall include a statement that compensation for the acquisition has been deposited into a trust account, and that a contact person at the department designated in the re-issued notice can assist the leaseholder in withdrawing said funds from the trust account. The re-issued notice shall also include a statement that any funds in the trust account remaining unclaimed after five years shall be declared abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151, et seq.

F. Upon the effective date of acquisition of affected acreage as stated in the notice of acquisition, possession of the affected acreage acquired pursuant to the notice of acquisition, issued in accordance with this section shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance, and regardless of whether the leaseholder actually receives the notice of acquisition.

G. No lease shall be granted for any water bottom for which any lease was previously acquired by the state for coastal protection, conservation, or restoration, unless the secretary of DWF determines that leasing would otherwise be appropriate under the provisions of Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950 and the secretary of DNR affirms that the water bottom is not necessary for coastal protection, conservation, or restoration, as provided by and in accordance with the provisions of R.S. 56:425(E). Unless this determination has been made prior to issuance of the lease, a lease of water bottom for which a lease was previously acquired shall be null and void for such water bottom and shall be of no force or effect. No person shall have any claim against either secretary, either department, the state of Louisiana, its political subdivisions, the United States, or any agency, agent, contractor, or employee thereof or any other person in relation to the nullity of such lease. The determination of whether the water bottom sought to be leased is not necessary for coastal protection, conservation, or restoration shall be at the sole discretion of the secretary of DNR, upon consideration of existing, planned, projected, or reasonably foreseeable projects or other actions needed for coastal protection, conservation, or restoration.

H. Nothing in these regulations shall be construed to require the secretary to engage in or perform any project or other action for coastal protection, conservation, or

restoration or any oyster resource survey, appraisal, or valuation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:425, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2092 (November 2006).

§865. Administrative Review

A. A leaseholder of an oyster lease acquired, in whole or in part, in accordance with these regulations and R.S. 56:432.1 may seek an administrative hearing through the department.

1. Any such adjudication shall be limited to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper, or whether the compensation issued by the department satisfies the rules and regulations under this Subchapter.

2. Any leaseholder whose lease is not acquired, but upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration has occurred, may also seek an administrative hearing through the department under this section to determine if acquisition of such oyster lease acreage would be proper.

B. A leaseholder's request for an administrative hearing under this section shall be requested in writing and sent to the department at the following address: Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

1. A written request for adjudication under this Section must be received by the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment to which the request pertains. However, a request for adjudication may be submitted to the department within two years after completion of the project for which acreage was acquired, if and only if, the leaseholder establishes that notice of the acquisition, determination of compensation, or payment was not issued as required by R.S. 56:432.1 or §863, or the request for adjudication seeks review of the lack of acquisition of leased acreage upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration has occurred.

a. A request for adjudication received after the aforementioned deadlines, as applicable, is not timely and shall be denied.

b. A request for adjudication is deemed timely "received" when the request is mailed on or before the due date. If the papers are received by mail on the first legal day following the expiration of the delay, there shall be a rebuttable presumption that they are timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown by an official United States postmark or by official receipt or certificate from the United States Postal Service or a bona-fide commercial mail service such as Federal Express or United States Parcel Service, made at the time of mailing which indicates the date thereof.

2. A request for an administrative hearing shall, at a minimum, include the following:

a. identification of the notice of acquisition to which the request pertains, or if no notice has been issued, identification of the affected lease and affected acreage to which the request pertains;

b. a statement of the relief requested, identifying the specific issue or point as to which adjudication is sought;

c. a statement of the reasons such relief is requested, and the facts upon which the request for relief is based;

d. the name and address to which the department and the Division of Administrative Law will send all communications regarding the request for administrative review. Neither the department nor the Division of Administrative Law have any obligation to deliver any communications or other notices regarding the request to any person or address other than the address listed in the request or any amendment thereto. If no person is listed, the department and the Division of Administrative Law shall deliver all communications or notices to the last address on file for the leaseholder with DWF, and shall have no obligation to deliver communications or notices to any other person or address.

3. The department shall promptly submit a request for adjudication to the Division of Administrative Law.

C. Any adjudication hereunder shall be governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950, et seq., and the Division of Administrative Law Act (DALA), R.S. 49:991, et seq., unless such procedures are inconsistent or in conflict with the provisions of this Subchapter or R.S. 56:432.1.

D. The leaseholder may provide to the Division of Administrative Law, the department, and any other parties, including any holder of any lien or encumbrance or any other leaseholder claiming an interest in the acreage at issue, on or before the date of the adjudication, any reasonably confirmable data or other information that the leaseholder believes should be considered by the Division of Administrative Law in conducting the administrative review of the determination of the department. The Division of Administrative Law shall consider any reasonably confirmable data or information timely provided to the department by the leaseholder or any other person pursuant to §863 and R.S. 56:432.1. The Division of Administrative Law may disregard any information or data that is not submitted timely pursuant to this Subchapter.

E. The final decision of the Division of Administrative Law shall be issued to the leaseholder, in writing by certified mail, at his address on file with DWF on the date of issuance thereof, or at such other address as may be specified in the request for adjudication; and the Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

F. A request for adjudication shall have no effect upon the validity of the acquisition of the acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if adjudication is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or

restoration. If the acquisition is invalidated, the full possession of the oyster lease acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

G. If the Division of Administrative Law declares in a final decision that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department, subject to Constitution Article 12, Section 10, shall issue a check or draft to the leaseholder for such additional amount, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication, within 60 days after issuance of the final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2094 (November 2006).

§867. Judicial Review

A. A leaseholder may seek judicial review of the final decision of the Division of Administrative Law under §865 in accordance with R.S. 56:432.1(D), based solely on the administrative record and, except as otherwise provided in these rules or by R.S. 56:432.1, governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950, et seq. and the Division of Administrative Law Act (DALA), R.S. 49:991, et seq.

B. Proceedings for judicial review may be instituted in accordance with R.S. 56:432.1(D) by filing a petition in the Nineteenth Judicial District Court for the Parish of East Baton Rouge within 60 days after issuance of the final decision of the Division of Administrative Law. No petition for judicial review may be filed, and any such petition is premature, unless adjudication has been timely sought and all administrative remedies have been exhausted. Copies of the petition shall be served upon the secretary and on all parties of record.

C. A request for judicial review shall have no effect upon the validity of the acquisition of any oyster lease acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if review is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

D. If the court declares in its judgment that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department may appeal the judgment in accord with R.S. 49:965 of the Administrative Procedure Act (APA). If the judgment is affirmed on appeal or no appeal is taken and subject to Constitution Article 12,

Section 10, the department shall issue a check or draft to the leaseholder for such additional compensation as set forth in the original judgment or as may be modified or amended on appeal by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication no more than 60 days after the judgment becomes final and definitive under the provisions of Articles 2166 and 2167 of the Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2095 (November 2006).

§869. Reimbursement of Costs of Acquisition

A. The department may acquire any acreage under this Subchapter in relation to a project or action for coastal protection, conservation, or restoration performed or to be performed by or for the United States, any department, agency, board, commission, or political subdivision of the state, or any other public or private entity responsible for a project.

B. If the department acquires acreage under this Subchapter in relation to any project or action performed by any person or entity other than the department, such entity shall compensate the department for all costs incurred by the department, which are associated with the acquisition.

C. The costs for which reimbursement is due under this Subchapter includes but is not limited to costs of oyster resource surveys, appraisal, administrative, or other uses of department personnel or resources, payment for acquisition, and awards on administrative adjudications or judicial review.

D. The secretary may choose, at his sole discretion, to waive any part or all of the compensation that would otherwise be required under this Section. No person or entity shall have any right to such waiver, and the secretary shall have no obligation to make such a waiver. Waiver of any part of the compensation that would otherwise be required shall not affect any obligation to pay the remainder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2095 (November 2006).

Subchapter C. Rules Governing Davis Pond Oyster Relocation Program

§875. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1483 (July 2000), repealed LR 32:2095 (November 2006).

§877. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1483 (July 2000), repealed LR 32:2095 (November 2006).

§879. Notification of Leaseholders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:2095 (November 2006).

§881. Leaseholder Options

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:2096 (November 2006).

§883. Exchange Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:2096 (November 2006).

§885. Relocation Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1485 (July 2000), repealed LR 32:2096 (November 2006).

§887. Retention Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:2096 (November 2006).

§889. Purchase Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:2096 (November 2006).

§891. Payment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:2096 (November 2006).

§893. Release

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1487 (July 2000), repealed LR 32:2096 (November 2006).

§895. Appeals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1487 (July 2000), repealed LR 32:2096 (November 2006).

Scott A. Angelle
Secretary

0611#018

RULE

**Department of Social Services
Office of Family Support**

CCAP/STEP Mandatory Electronic Payments
(LAC 67:III.2901, 2902, 2905-2913, 5107, 5109, and 5729)

The Department of Social Services, Office of Family Support, amended LAC 67:III §§5107 and 5109 in the Child Care Assistance Program (CCAP) and §5729 in the Strategies to Empower People (STEP) Program, and repeals Subpart 5. Family Independence Work Program (FIND Work).

Electronic disbursement will allow the agency to provide effective and efficient disbursement of CCAP and STEP payments while eliminating the need to print and mail checks. Authority for this action is ACF Guidance, ACYF-IM-CC-05-03, Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations.

Additionally, the agency repealed the FIND Work Program as it was replaced by the Strategies to Empower People (STEP) Program in October 2003.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 5. Family Independence Work Program

Chapter 29. Organization

Subchapter A. Designation and Authority of State

Agency

§2901. General Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 19:504 (April 1993), LR 24:1135 (June 1998), repealed LR 32:2096 (November 2006).

§2902. State Plan

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:450 (April 1997), amended LR 28:1598 (July 2002), repealed LR 32:2096 (November 2006).

§2905. Program Administration

Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:42146 et seq., 45 CFR 250.30, 45 CFR 250.33, R.S. 460.3(A)(3), R.S. 46:453(B), 45 CFR 251.4 and 45 CFR 251.5, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:627 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 17:973 (October 1991), LR 19:505 (April 1993), LR 23:450 (April 1997), repealed LR 32:2096 (November 2006).

Subchapter B. Participation Requirements

§2907. Individual Participation Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 16:1064 (December 1990), LR 19:505 (April 1993), LR 19:1177 (September 1993), LR 23:450 (April 1997), LR 24:1781 (September 1998), LR 25:2455 (December 1999), LR 26:1343 (June 2000), repealed LR 32:2097 (November 2006).

§2909. Failure to Participate

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193; R.S. 46:231, R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:627 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 18:870 (August 1992), LR 19:505 (April 1993), LR 23:451 (April 1997), LR 24:353 (February 1998), LR 25:2455 (December 1999), LR 26:1343 (June 2000), repealed LR 32:2097 (November 2006).

Subchapter C. Activities and Services

§2911. Work Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 17:1227 (December 1991), LR 19:505 (April 1993), LR 20:1130 (October 1994), LR 22:1142 (November 1996), LR 23:451 (April 1997), LR 25:2456 (December 1999), repealed LR 32:2097 (November 2006).

§2913. Support Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:388 (April 1991), amended LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:505 (April 1993), LR 20:794 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:2456 (December 1999), LR 26:1343 (June 2000), LR 28:102 (January 2002), repealed LR 32:2097 (November 2006).

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5107. Child Care Providers

A. ...

B. A licensed Class A center or licensed Class A Head Start center must be active in the Child Care Assistance Program (CCAP) Provider Directory, complete and sign a Class A provider agreement, and provide complete and accurate documentation and information required for Direct Deposit before payments can be made to that facility.

C. - D.1.d ...

E. A public or non-public school program must be certified, must complete and sign a school program provider agreement and Form W-9, must be regulated by the Board of Elementary and Secondary Education (BESE) if a public school or *Brumfield vs. Dodd* approved if a non-public school, and provide complete and accurate documentation

and information required for Direct Deposit before payments can be made to that provider.

F. Under no circumstance can the following be considered an eligible CCAP provider:

1. a person living at the same residence as the child;

2. the child's parent or guardian, or parent/caretaker relative in the case of a STEP participant, whether or not that individual lives with the child;

3. an FCDCH provider, (if the child's non-custodial parent is residing in the FCDCH and is not working during the hours that care is needed);

4. a Class B child care center;

5. an individual who has been the subject of a validated complaint of child abuse or neglect, or has been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1(C), unless approved in writing by a district judge of the parish and the local district attorney;

6. an FCDCH provider who resides with or employs a person in their home or on their home property who has been the subject of a validated complaint of child abuse or neglect, or has been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1.C. unless approved in writing by a district judge of the parish and the local district attorney;

7. a person/center providing care outside of the state of Louisiana.

G.1. A provider shall be denied or terminated as an eligible CCAP provider if:

a. - g ...

h. a Class A or School Child Care Provider fails to submit complete and accurate documentation and information required for Direct Deposit.

G.2. - I.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:2097 (November 2006).

§5109. Payment

A. - E. ...

F. Electronic disbursement of child care payments shall be mandatory for all types of CCAP providers. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider. It is mandatory for Class A and School Child Care providers to utilize direct deposit to receive their CCAP payments. The fees associated with the use of a stored value card are subject to the conditions of that financial institution.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July

2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:2097 (November 2006).

Subpart 16. Strategies to Empower People (STEP)

Program

Chapter 57. Strategies to Empower People (STEP)

Program

Subchapter C. STEP Program Process

§5729. Support Services

A. - B.5. ...

C. Electronic disbursement of support services payments shall be mandatory for all payment types.

1. Electronic disbursement of support services payments other than child care payments includes direct deposit to the STEP participant's bank account (checking or savings) or payments to a stored value card account for the STEP participant.

2. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR 32:2098 (November 2006).

Ann Silverberg Williamson
Secretary

0611#048

RULE

**Department of Social Services
Office of Family Support**

**KCSP-FTAP-STEP—Parent Skills—IFG
(LAC 67:III.5329)**

This Rule was printed in the October 20, 2006 edition of the *Louisiana Register* on pages 1911-1914. Section 5329 of this Rule is being repromulgated to correct a codification error.

The Department of Social Services, Office of Family Support, amended LAC 67:III, Subpart 2, Subpart 10, Subpart 13, and Subpart 16.

The agency amended §§1209, 1223, 1225, 1229, 1245, and 1291 in the Family Independence Temporary Assistance Program (FITAP); §§5307, 5321, 5323, 5329, 5339, 5341, and 5391 in the Kinship Care Subsidy Program (KCSP) and §5711 in the Strategies to Empower People (STEP) Program. These amendments were effected by a Declaration of Emergency signed May 1, 2006, and published in the May issue of the *Louisiana Register*.

Additionally, the agency is repealing Subpart 10, Individual and Family Grant (IFG) Program because effective October 15, 2002, IFG was replaced by the Individual and Households Program (IHP) which is administered by the Federal Emergency Management Agency.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5329. Income

A. Income is any gain or benefit to a household that has monetary value and is not considered a resource. Count all income in determining pretest eligibility except income from:

1. - 30. ...

31. effective May 1, 2006, Supplemental Security Income (SSI).

B. - B.2.c. ...

3. For purposes of this pretest, income is defined as countable income belonging to any member of the KCSP income unit. Exception effective May 1, 2006: Income for children receiving foster care and Supplemental Security Income is not included in the income test.

C. Income after Pretest. The child is determined eligible for KCSP if the child's countable income is, effective July 1, 2006, less than \$280. If the child's countable income is effective July 1, 2006, \$280 or more, the child is ineligible.

D. Payment Amount. Effective July 1, 2006, payment amount is \$280 per month for each eligible child.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:1913 (October 2006), repromulgated LR 32:2098 (November 2006).

Ann Silverberg Williamson
Secretary

0611#024

RULE

**Department of Social Services
Office of Family Support**

TANF Initiatives

(LAC 67:III.5509, 5549, 5555, 5569, 5579 and 5587)

The Department of Social Services, Office of Family Support, amended the Louisiana Administrative Code, Title 67, Part III, Subpart 15, Chapter 55, §§5549, 5555; adopts §§5509, 5569, and 5587; and repeals §5579.

The initiatives being adopted include §5509, Domestic Violence Services, §5569, Alternatives to Abortion Services Program, and §5587, Children's Defense Fund Freedom Schools.

Additionally, the agency made changes in order to clarify services and funding sources.

The agency also repealed §5579, Developmental and Socialization Activities Program for Foster Children, as funding is no longer available for this TANF Initiative.

Title 67
SOCIAL SERVICES
Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families
(TANF) Initiatives

Chapter 55. TANF Initiatives

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is not limited to needy families. Eligibility for services is limited to children and/or their parents or caretaker relatives who are victims of domestic violence.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2099 (November 2006).

§5549. OCS Child Welfare Programs (Effective April 12, 2002)

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at risk of abuse or neglect. The methods of collaboration include:

A.1. - B. ...

C. Financial eligibility is limited to needy families which include a minor child living with a custodial parent or an adult caretaker relative. A needy family is a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:2374 (November 2002), amended LR 31:486 (February 2005), LR 32:2099 (November 2006).

§5555. Individual Development Account Program
(Effective July 1, 2002)

A. - B. ...

C. Effective July 1, 2006, IDA funds may be used for one or more of the following qualified purposes as determined by the secretary:

C.1 - D. ...

E. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in homes of relatives.

F. Eligibility is limited to low-income families at or below 200 percent of the federal poverty level.

G. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; Act 1098, 2001 Reg. Session; Act 84, 2002 First Extraordinary Session; Act 13, Reg. Session; HB 1, 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:45 (January 2003), amended LR 32:2099 (November 2006).

§5569. Alternatives to Abortion Services Program

A. Effective June 1, 2006, the Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to provide intervention services including crisis intervention, counseling, mentoring, support services, and pre-natal care information, in addition to information and referrals regarding healthy childbirth, adoption, and parenting to help ensure healthy and full-term pregnancies as an alternative to abortion.

B. These services meet the TANF goals to provide assistance to needy families so children may be cared for in their own homes or in the homes of relatives and to encourage the formation and maintenance of two-parent families by providing pregnancy and parenting support to low-income women, their male partners, and families who are experiencing an unplanned pregnancy.

C. Eligibility for services is limited to pregnant women, their male partners, and/or pregnant minors whose family's income is at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2099 (November 2006).

§5579. Developmental and Socialization Activities
Program for Foster Children

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1, 2004 Reg. Session, Act 16 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:488 (February 2005), repealed LR 32:2099 (November 2006).

§5587. Children's Defense Fund Freedom Schools

A. Effective June 1, 2006, the agency shall enter into contracts to create supportive, nurturing, literature-rich environments for children ages 5 to 18 years of age by focusing on literacy, cultural heritage, parental involvement, servant-leadership, and social action. The Freedom Schools program connects the needs of children and their families with the resources of the community.

B. These services meet the TANF goal to prevent and reduce out-of-wedlock pregnancies.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2099 (November 2006).

Ann S. Williamson
Secretary

0611#049

RULE

Department of Social Services Office of Family Support

TANF Initiatives—Third Party In-Kind Contributions (LAC 67:III.5585)

Editor's Note: Section 5585, Third Party In-Kind Contributions, is being repromulgated to correct a codification error. This Rule was promulgated in the October 20, 2006 *Louisiana Register* and can be viewed on page 1914.

The Department of Social Services, Office of Family Support, adopted LAC 67:III, Subpart 15, Chapter 55, §5511 Micro-Enterprise Development Program and §5585, Third Party In-Kind Contributions as TANF MOE.

As a result of Act 1 of the 2004 Regular Legislative Session, the agency repealed several TANF Initiatives including Micro-Enterprise Development effective September 2004, as funding was no longer available. Pursuant to Act 16 of the 2005 Regular Session of the Louisiana Legislature, the agency is re-establishing this program as funds have once again been appropriated for this initiative.

As a consequence of two hurricanes striking Louisiana in 2005, the Red Cross provided certain mass care in Louisiana to persons affected by the storms. The value of certain goods, services, and expenditures provided to eligible families by the Red Cross may count toward the state's Maintenance of Effort (MOE) requirement.

The Department of Social Services (DSS) has requested that the Red Cross advise the department of the total value of expenses paid by the organization between September 1 and December 31, 2005, for mass care so that DSS may count a portion of the total value towards the state's MOE requirement. This new TANF Initiative, Third Party In-Kind Contributions as MOE, provides a mechanism to capture the information on third party in-kind contributions for use as TANF MOE.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5585. Third Party In-Kind Contributions as TANF MOE

A. The Office of Family Support (OFS) may enter into a Memorandum of Understanding with the American Red Cross and other third-party organizations to collect information on expenditures for services provided to families following a federally-declared disaster for the purpose of claiming eligible expenditures as TANF Maintenance of Effort (MOE). Eligible expenditures include activities and services provided on a congregate basis to the community as a whole, such as sheltering, feeding, bulk distribution of items, but not including any expenses for which the federal government is obligated to reimburse the third party.

B. The third party organization shall determine the total value of the expenses and advise OFS of this value on a periodic basis.

C. OFS shall establish a methodology to estimate the percentage of total expenses that were made on behalf of TANF-eligible families following a federally-declared disaster.

D. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

E. Financial eligibility for these services is limited to eligible families. A family consists of a minor child living with a custodial parent or an adult caretaker relative. An eligible family is one with income at or below 200 percent of the federal poverty level.

F. OFS will count eligible third party in kind contributions as TANF Maintenance of Effort (MOE) funds starting September 2005.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:1914 (October 2006), repromulgated LR 32:2100 (November 2006).

Ann Silverberg Williamson
Secretary

0611#077